

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

CITY OF ROCKFORD, Case No. 3:17-cv-50107

Plaintiff,

v.

VIDEOTAPED
DEPOSITION OF:
DR. STEVEN MILLER

MALLINCKRODT ARD INC.,
et al.,

SEPTEMBER 15, 2022
9:02 a.m.

Defendants.

SERIES 17-03-615, a
designated series of MSP
RECOVERY CLAIMS, SERIES
LLC, et al.,

Case No. 3:20-cv-50056

Plaintiffs,

v.

EXPRESS SCRIPTS INC., et al.,

Defendants.

VIDEOTAPED DEPOSITION OF
DR. STEVEN MILLER, before Alexis A. Jensen, RPR,
CRR, and a Certified Court Reporter, at Hilton
St. Louis Airport, 10330 Natural Bridge Road,
St. Louis, Missouri, on Thursday,
September 15, 2022, commencing at approximately
9:02 a.m., pursuant to Notice.

JOSEPH ALBANESE, JR., CSR
250 Washington Avenue
Toms River, New Jersey 08753
Telephone (732) 244-6100
Fax (732) 286-6316

1 A P P E A R A N C E S:

2

HAVILAND HUGHES

3 BY: DONALD E. HAVILAND, ESQ.

201 South Maple Way

4 Suite 110

Ambler, Pennsylvania 19002

5 215.609.4661

haviland@havilandhughes.com

6 Counsel for the City of Rockford and the Class

7

QUINN EMANUEL URQUHART & SULLIVAN, LLP

8 BY: KEITH H. FORST, ESQ.

J. MATTHEW HAMANN, ESQ.

9 1300 I Street, NW

Washington, D.C. 20005

10 202.538.8162

keithforst@quinnemanuel.com

11 matthewhamann@quinnemanuel.com

Counsel for the Express Scripts Entities

12

13 MILBERG COLEMAN BRYSON PHILLIPS GROSSMAN, PLLC

BY: ANNA HIGGINS, ESQ.

14 27 W. Monroe Street

Suite 2100

15 Chicago, Illinois 60606

312.593.3354

16 ahiggins@milberg.com

Counsel for the MSP Plaintiffs

17

18

19

20

21

22

23

24

25

1 APPEARANCES CONTINUED:

2

BARTIMUS FRICKLETON ROBERTSON RADER

3 BY: JAMES BARTIMUS, ESQ.

ANTHONY DEWITT, ESQ.

4 4000 W 114th St

Suite 310

5 Leawood, Kansas 66211

913.266.2300

6 jb@bflawfirm.com

ald@bflawfirm.com

7 Counsel for the MSP Plaintiffs

8

9 Also present: Urmila Baumann, Associate Chief

Counsel, Express Scripts

10 Nathan Arndt, Videographer

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I N D E X

2 WITNESS

3 DR. STEVEN MILLER

4

5 EXAMINATION

6 BY MR. HAVILAND, page 8

BY MR. HUNDLEY, page 300

7

8 EXHIBITS:

9 01 Dr. Miller's signature page for
10 confidentiality order, page 10

11

02 MNK04024815-16, page 28

12

03 MNK00081796-98, page 78

13

04 Questcor Press Release, 8/27/07, page 78

14

05 MNK00082108, page 82

15

06 ExpressScripts0578988, page 85

16

07 ExpressScripts5500329-31, page 96

17

08 ExpressScripts5478859-60, page 102

18

09 ExpressScripts0837581-83, page 115

19

10 ExpressScripts4932466-90, page 118

20

11 ExpressScripts0511827-29, page 126

21

12 ExpressScripts5769673-74, page 150

22

13 ExpressScripts5566025-33, page 150

23

14 ExpressScripts4990395-98, page 154

24

15 ExpressScripts0834559, page 162

25

1 EXHIBITS CONTINUED:

2

16 ExpressScripts4856396-400, page 164

3

17 ExpressScripts0982536-37, page 168

4

18 ExpressScripts0992149-52, page 186

5

19 ExpressScripts5768881-82, page 195

6

20 ExpressScripts0837545-47, page 207

7

21 Emails, 6/5/17, page 219

8

22 ExpressScripts0837549-50, page 230

9

23 ExpressScripts0959385, page 235

10

24 ExpressScripts5353147, page 237

11

25 ExpressScripts0834253-65, page 240

12

26 ExpressScripts5484513-14, page 246

13

27 ExpressScripts1096837-41, page 255

14

28 Emails, 5/21/18, page 280

15

29 ExpressScripts4848402-06, page 284

16

30 ExpressScripts0000434-49, page 290

17

31 ExpressScripts0515829, page 301

18

32 ExpressScripts0975522-23, page 304

19

20

21

22

23

24

25

1 THE VIDEOGRAPHER: We are now on
2 the record. This is the deposition of
3 Dr. Steve Miller in the matter of City of
4 Rockford versus Mallinckrodt ARD, et al.
5 This deposition is being held at the
6 Hilton St. Louis Airport, 10330
7 Natural Bridge Road, St. Louis, Missouri.

8 Today's date is September 15th,
9 2022, and the time is 9:02 a.m. My name
10 is Nathan Arndt. I'm the videographer.
11 The court reporter is Alexis Jensen.

12 Counselors, will you please
13 introduce yourselves and affiliations for
14 the record, and the witness will be sworn
15 in.

16 MR. HAVILAND: This is Don Haviland
17 from Haviland Hughes, Counsel for the City
18 of Rockford and the Class.

19 MR. FORST: Good morning.
20 Keith Forst with Quinn Emanuel Urquhart --
21 oh, I'm sorry. I --

22 MR. HAVILAND: We have other
23 Plaintiffs' Counsel.

24 MR. FORST: Go ahead. I'm sorry.

25 MS. HIGGINS: Good morning.

1 Anna Higgins, from Milberg, on behalf of
2 the MSP Series Plaintiffs.

3 MR. FORST: And, again,
4 Keith Forst, with Quinn Emanuel Urquhart &
5 Sullivan, on behalf of the witness and
6 Defendants Express Scripts Entities.

7 MR. BARTIMUS: James Bartimus on
8 behalf of the City of Rockford.

9 MR. HAMANN: Yes, I'm
10 Matt Hamann --

11 MR. DEWITT: Anthony DeWitt on
12 behalf of the City of Rockford.

13 MR. HAVILAND: Oh, we have a crowd.
14 Okay. Anyone else for Rockford?

15 MR. HAMANN: Anyone else?

16 MR. HAVILAND: Yeah. Okay.

17 MR. HAMANN: All right. You also
18 have Matt Hamann, from Quinn Emanuel, on
19 behalf of the Express Scripts Entities.

20 MS. BAUMANN: Urmila Paranjpe
21 Baumann, Associate Chief Counsel for
22 Litigation, on behalf of the Express
23 Scripts Entities.

24 MR. HAVILAND: All right. We
25 ready?

1 Good morning, Dr. Miller.

2 (Discussion held off the record.)

3 DR. STEVEN MILLER,

4 having been called as a witness, being

5 duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. HAVILAND:

8 Q Once again, good morning,

9 Dr. Miller.

10 A Good morning.

11 Q My name is Don Haviland, and I'm

12 a -- a lawyer for the City of Rockford in a case

13 that was filed against Mallinckrodt and

14 Express Scripts way back in April of 2017.

15 I -- you understand you're

16 appearing today to give a deposition, right?

17 A Correct.

18 Q Have you ever been deposed before,

19 sir?

20 A Yes, sir.

21 Q In the last 10 years?

22 A No, sir.

23 Q Okay. In your capacity as an

24 employee of Express Scripts?

25 A No, sir.

1 Q Okay. I assume your esteemed
2 Counsel here has gone over the -- the general
3 guidelines. We're in a conference room here in
4 St. Louis. We have a stenographer that's taking
5 down the written transcription. So, the room
6 doesn't have very good acoustics, but I will keep
7 my voice up.

8 So, if you don't understand or hear
9 a question, just ask me. I want to have a very
10 clear record with you, so you understand what I'm
11 asking, and I understand what you're answering.

12 Is that fair?

13 A Great.

14 Q If you need to take a break,
15 consult with Counsel, you can do that at any
16 time. I ask you to give me a heads-up and try
17 not to do that during a pending question, so that
18 we can take reasonable breaks, and we'll -- we'll
19 try to do something in about an hour or so.

20 Alrighty?

21 A Thank you.

22 Q Preliminarily, I want to show you
23 what was signed this morning. It's an
24 acknowledgment of the Confidentiality Order.
25 I've marked that as Miller Exhibit 1. And just,

1 if you can, sir, identify your signature.

2 (Exhibit 1 was marked.)

3 THE DEPONENT: That's -- that's my
4 signature.

5 BY MR. HAVILAND:

6 Q Okay. Perfect. Thank you. And
7 that's just dealing with the issue of some of the
8 material that was produced by the Defendants in
9 this case was deemed confidential. All right.

10 You are no longer employed by
11 Express Scripts?

12 A I consult for Cigna.

13 Q Cigna. Okay. Do you have a title?

14 A I'm a consultant to Cigna.

15 Q Okay. When did you take that role
16 on; after the merger or sometime after that?

17 A On January 1st, I stepped down from my
18 full-time position as executive vice president
19 and chief clinical officer for Cigna.

20 Q If you could just keep your voice
21 up a little bit, that's -- it's tailing off at
22 the end.

23 A Oh, sorry.

24 Q That's okay. I'm a few feet away
25 from you, so I'll try to monitor what I'm

1 hearing. I'm sure the video's picking it up,
2 but...

3 So you were the executive vice
4 president up until December of 2021?

5 A Yes, correct.

6 Q Okay. And then you took on this
7 consulting role at Cigna, right?

8 A Correct.

9 Q All right. Do you have any other
10 employment outside of your consultancy?

11 A No, sir.

12 Q Okay. Let's take a -- a moment
13 just to acquaint you to the jury.

14 You are -- you go by
15 Dr. Steve Miller, correct?

16 A Correct.

17 Q And the doctor is what; a doctorate
18 in?

19 A MD.

20 Q You're an MD. Okay. When did you
21 graduate medical school, sir?

22 A In 1983.

23 Q Okay. Where'd you go?

24 A University of Missouri, Kansas City.

25 Q Okay. There's a fellow Lion there

1 that'll want to have a chat with you later. He's
2 from Kansas City himself, so...

3 All right. And then walk me
4 briefly through your history from graduating
5 medical school, and -- and get me to Express
6 Scripts, if you can.

7 A Yeah. So, my first position after medical
8 school was an intern at the University of
9 Colorado, Denver. Stayed there as a medical
10 resident. Stayed on as faculty for a year after
11 that.

12 In 1988, I moved to Washington
13 University in St. Louis, where I was a kidney and
14 transplant fellow. I stayed on the faculty there
15 for 17 years, rising through the ranks, becoming
16 the chief medical officer for Washington
17 University and Barnes-Jewish Hospital. A basic
18 scientist by training, I had a laboratory, doing
19 drug discovery. I have many patents, many
20 publications.

21 In 2005, was recruited to Express
22 Scripts, and came there, stayed with them through
23 the Cigna merger, as the executive vice -- or the
24 executive vice president and chief medical
25 officer -- or chief medical officer for Express

1 Scripts. When Cigna bought Express Scripts, I
2 was asked to be the chief clinical officer for
3 both companies. I stayed on for an additional
4 three years post the merger, as the chief
5 clinical officer -- the executive vice president
6 and chief clinical officer for Cigna.

7 Q Was there a -- a change in
8 responsibility or function between chief medical
9 officer and chief clinical officer?

10 A Yes. So, previously, I was responsible
11 just for the PBM, which was primarily focused on
12 pharmaceuticals. Obviously, Cigna is a health
13 plan, and so I took responsibility for the health
14 plan, still overseeing the PBM. But also, you
15 know, Cigna is an international health plan, so
16 we're in 30 different countries and the
17 United States.

18 Q Okay. So, I want to start in 2005.
19 Have you always had the role as a
20 medical officer within Express Scripts?

21 A So, my first position when I came to
22 Express Scripts was as -- I was the vice
23 president of product, and stayed in that role for
24 about the first year and a half or so, before I
25 became the chief clinical officer.

1 Q Okay. So, to about --

2 A Chief medical officer.

3 Q -- mid '06?

4 A Correct.

5 Q Okay. And then you transitioned,
6 was it, over to --

7 A Got promoted to the senior vice president
8 and chief medical officer.

9 Q In about the middle of '06?

10 A Correct.

11 Q Okay. And then did your role
12 essentially stay the same, but grow in
13 responsibility?

14 A So, I was no longer -- so, Express Scripts
15 had never had a chief medical officer. When I
16 was recruited, that was the vision for the
17 position, but -- and they didn't -- it was
18 somewhat of a nebulous job description. So what
19 I did is I actually went to all the areas of
20 Express Scripts to see how I could add value to
21 them.

22 So HR, how can I add value to our
23 own employee health benefits? For sales and
24 account management, how can I support you in the
25 sales effort? For legal, how can I be of help

1 to -- to their area? For government affairs, how
2 can I support them? And so, I quickly was able
3 to establish the ability to help many of the
4 different areas within Express Scripts.

5 Q All right. Did you also get
6 involved in any of the business development
7 functions?

8 A Yes.

9 Q Okay. And it's very difficult to
10 kind of pinpoint in time the business
11 development, but you're familiar with a gentleman
12 by the name of Rob Osborne?

13 A Yes.

14 Q Okay. And I know he had a title of
15 business development and kind of oversaw
16 CuraScript and then later Accredo, when there was
17 the Medco merger.

18 And did you -- did you have any
19 interface with Mr. Osborne and his group?

20 A Yes.

21 Q Okay. In what way -- ways?

22 A So, like every other area, if there was
23 ways I could support them, I would. You know,
24 they were really about drug access, and so -- and
25 at the time, as you know, or shortly thereafter,

1 Express Scripts acquired CuraScript, and so I
2 supported the -- the due diligence of CuraScript
3 and the integration of the company.

4 Q All right. And -- and we -- we
5 call it CuraScript, but it's also Priority
6 Healthcare, right?

7 A Priority was one of the acquisitions of
8 CuraScript.

9 Q Right. And then later on, when ESI
10 merged with Medco, it took on a -- similar
11 companies to what was already in the portfolio,
12 one of which was Accredo?

13 A Correct.

14 MR. FORST: Objection to the form.

15 You can answer.

16 BY MR. HAVILAND:

17 Q Is that right?

18 A Yes.

19 Q Yeah, I'm not going to -- we've
20 talked to other company executives about these
21 issues. I'm just trying to orient ourselves and
22 your role as -- as kind of a consultant to all
23 those different areas, right?

24 MR. FORST: Objection to the form.

25 You can answer.

1 THE DEPONENT: Oh. Yes, so I
2 attempted to aid any of the departments
3 where I could be of value.

4 BY MR. HAVILAND:

5 Q Okay. Let's -- let's talk a little
6 bit about Express Scripts. And obviously, I'm
7 limiting myself to the time you were there, from
8 2005 to the time you -- well, you're still
9 consulting at -- at Cigna, correct?

10 A I still consult at Cigna, correct.

11 Q So, you still have some consultant
12 role with respect to the PBM as it exists within
13 the Cigna company, right?

14 A So, yeah, I still, when asked, would --
15 you know, would be happy to help if -- if there's
16 services needed at Express Scripts.

17 Q What's the mission of Express
18 Scripts?

19 A It's to make drugs more affordable for
20 Americans.

21 Q Okay. How do they do that?

22 A So, we primarily do it by several
23 mechanisms. So, making sure the patient's
24 getting the right drug at the right time through
25 the right channels, at -- in the most affordable

1 way. We drive better care through adherence.
2 So, we have clinical programs that help assist
3 patients in their care. And so those are the
4 primarily -- primary ways in which we assist
5 patients to get to the right drugs at the lowest
6 costs.

7 Q What does ESI do to help drive down
8 the cost of prescription drugs?

9 A So, one of the -- there are -- there's
10 essentially no other entities in the US
11 marketplace that work to drive down the costs of
12 drugs. Initially, our biggest lever was the
13 ability to move people from branded drugs to
14 generic drugs. And so, that was extremely
15 valuable, because generic drugs are often much
16 more inexpensive than the branded product, but
17 equally efficacious.

18 And then, for the times where there
19 are no generics, if there's competition, there's
20 brands that compete in a category, we can pit
21 them against them, and hopefully get to the
22 lowest price.

23 Q What about specialty drugs, what
24 are specialty drugs?

25 A So, specialty drugs is a category of

1 drugs. Usually, they are very expensive. They
2 usually have special handling requirements. They
3 often are more toxic, and so they're not
4 routinely handled by retail pharmacists. And so,
5 specialty drugs is a class of drugs that
6 represents 2 to 4 percent of dispenses, but are
7 now up to almost 50 percent of the cost of
8 healthcare -- of pharmaceuticals care.

9 Q Can I get those statistics again?
10 2 to 4 percent --

11 A So, 2 to 4 percent of the population uses
12 a specialty medication, depending on the
13 population you're looking at; and it's currently
14 about 50 percent of pharmaceutical spend.

15 Q That's astounding, isn't it?

16 A It's very -- yes.

17 Q And that's grown over time since
18 you started at Express Scripts, right?

19 A Correct.

20 Q And it's grown as a function of
21 drugs being called speciality and then moved out
22 of general wholesale distribution?

23 A That's a minor component to it. It's the
24 innovation that's occurred in pharmaceuticals, so
25 the number of new products that come to the

1 marketplace. If you look at FDA approvals over
2 the last decade, the FDA approves more specialty
3 drugs than it does what are called the
4 traditional oral solid drugs.

5 And so, that's where --

6 (Reporter clarification.)

7 THE DEPONENT: The traditional oral
8 solid drugs for, like, diabetes, high blood
9 pressure, things like that.

10 And so, the real innovation in
11 pharmaceuticals has been -- and their business
12 model has been focused on creating new specialty
13 drugs.

14 BY MR. HAVILAND:

15 Q You -- you said that there's a
16 minor subset of specialty --

17 A There are some drugs that have --

18 Q Can I just -- sir?

19 A Yeah.

20 Q I actually had a thought that I
21 wanted to convey to you.

22 A Oh, sorry. Okay.

23 Q It's the first time, and I asked --
24 I didn't give you this instruction. If we could
25 just have good pace, a couple of seconds, I'll

1 finish my question, and that way we won't talk
2 over each other, and Alexis here has to get us
3 both down. So, I appreciate your willingness to
4 answer. Let me just reorient the question.

5 This category called "specialty,"
6 that didn't exist when you got out of medical
7 school, did it?

8 A I don't know.

9 Q Do you know what makes a drug,
10 special, who determines that it's a specialty
11 drug versus a brand or generic?

12 A So, the government actually has a
13 definition for specialty drugs, and so for the
14 government, it's any drug that is priced at over
15 \$500.

16 Q Okay. It's based upon price?

17 A For the government, yeah.

18 Q What about the commercial
19 marketplace, how is specialty determined?

20 A So, as we -- as I said previously, we look
21 at specialty drugs as high-priced drugs that
22 often require special handling or instructions or
23 have a big teaching component for the patient or
24 have more toxicities.

25 Q Okay. You'd agree with me, apart

1 from innovative medications that are launched
2 once they're discovered and put out in the
3 marketplace as innovative in terms of healthcare
4 treatment, there is a -- a grouping of specialty
5 drugs that are older, some call them orphan
6 drugs, they treat very limited patient
7 populations, and they've been around for a while?

8 A Yeah, so orphan drugs have a specific
9 definition also.

10 Q Okay.

11 A It's drugs that are designed for
12 populations of less than 200,000 people.

13 Q And are the drugs that treat that
14 limited patient population in those disease
15 states for which they treat, are they called
16 orphan drugs?

17 MR. FORST: I'll just object to the
18 form.

19 BY MR. HAVILAND:

20 Q Yeah, I just want to understand the
21 definition that you just gave us. Is it strictly
22 based upon population -- patient population?

23 A Yes, because -- as far as I understand,
24 because there's actually tax implications for the
25 developers of those drugs by getting the orphan

1 designation. So, when you file at the FDA, you
2 file to be an orphan product.

3 Q And that, like some patent
4 protection, gives the manufacturer of those
5 orphan drugs some limited period of exclusivity,
6 right?

7 A That's correct.

8 Q About seven years?

9 A I can't tell you precisely. I don't know.

10 Q Okay. That's fair. And, sir, I
11 only want to know what you know today, okay? I
12 don't want you to speculate, hypothesize. If you
13 have a thought that's based upon your experience,
14 I -- I welcome it, but I know what you've done,
15 and I know what you do. We have a lot of your
16 writings, including some emails to your wife
17 while she was teaching, but I hope to just talk
18 to you today and elicit your testimony and get
19 you out of here, okay?

20 A Great.

21 Q So, let's keep delving down in the
22 area of specialty drugs.

23 So, it -- it exists as a class
24 designation for drugs outside of branded and
25 generic, right?

1 A Correct.

2 Q And so the jury's watching this,
3 and -- and I always try to help them understand
4 what you and I might know better.

5 So, a branded drug would be
6 something like Lipitor that people take, a
7 statin, right?

8 A Um-hmm.

9 Q Is that a yes?

10 (Reporter clarification.)

11 THE DEPONENT: Yes.

12 BY MR. HAVILAND:

13 Q I should have said that you always
14 have to answer verbally too.

15 So, the jury would know when they
16 get a prescription for a statin that says
17 "Lipitor," they go in, and they would see the
18 manufacturer that make the branded drug, "I'm
19 getting Lipitor," right?

20 A Correct.

21 Q There's also generic versions of
22 some branded drugs, right?

23 A Correct.

24 Q And as you pointed out, they're
25 cheaper?

1 A Correct.

2 Q And some payers will prefer and --
3 and sometimes mandate generic substitution to
4 save cost, right?

5 A Correct.

6 Q All right. We have this group of
7 specialty drugs, which, as you point out, has
8 some special handling characteristics and treats
9 a very small portion of the population, 2 to 4
10 percent, right?

11 A Correct.

12 Q And it's also defined by high cost?

13 A Correct.

14 Q The government says \$500, but some
15 of those costs range into the hundreds of
16 thousands of dollars for a treatment regimen,
17 right?

18 A Now millions.

19 Q Now millions, that's right.
20 Spinraza, \$750,000, right?

21 A Well, there's now a new gene therapy for
22 \$2.8 million.

23 Q Yeah. It's -- it's really getting
24 out of control, isn't it, Doctor?

25 MR. FORST: Objection to the form.

1 THE DEPONENT: It's a challenge for
2 everyone.

3 BY MR. HAVILAND:

4 Q Yeah. I mean, could you imagine a
5 small municipality or health plan having to pay
6 \$2 million for one -- one beneficiary? It could
7 bankrupt plans, you'd agree?

8 A Correct.

9 Q So, one of the things that Express
10 Scripts tries to do is tamp down on that -- that
11 cost, right?

12 A Correct.

13 Q And specifically in the area of
14 specialty, after you came to Express Scripts,
15 Express Scripts acquired CuraScript, which had a
16 specialty distribution arm, right?

17 A Correct.

18 Q And -- and so the jury understands,
19 that's a distributor, a -- a warehouse, and then
20 a distribution function, for specialty drugs,
21 right?

22 A Correct.

23 Q May have some cold storage, but may
24 have just some general storage within a
25 warehouse, right?

1 A I've never been to their warehouse.

2 Q Nor have I, but that's what I've
3 heard.

4 And then specialty distributors, in
5 the case of CuraScript, will distribute out to
6 specialty pharmacies, right?

7 A I -- their -- I assume that could be their
8 customers, but hospitals, doctors' offices,
9 others could be their customers.

10 Q I'll tell you what, I'm going to
11 show you a document, just so we can kind of
12 orient ourselves about the product flow, and see
13 if you recognize the graphic as something that's
14 familiar to you.

15 As I said, I wasn't going to use a
16 lot of documents, but sometimes I think it'd be
17 helpful to use one or two, so you can kind of
18 see -- we've gotten a lot of information in this
19 lawsuit, so the information is helpful to us and
20 the jury to understand what we're speaking about.

21 So, I'm going to mark as Exhibit 2
22 to your deposition a document that I'm sure you
23 haven't seen before. So, I want you to take a
24 moment, and I'm going to look at the graphic on
25 the page 2, and I'll read into the record, once I

1 give your Counsel a copy of it.

2 MR. HAVILAND: I apologize now, I
3 only have one of some of these things, but
4 I do have other copies.

5 (Exhibit 2 was marked.)

6 BY MR. HAVILAND:

7 Q So, I'm going to call these
8 exhibits, Dr. Miller, Miller Exhibits [sic] 1, we
9 just marked. This is 2. For the record, Miller
10 Exhibit 2 is a Mallinckrodt-produced document,
11 with the Bates number -- and, sir, I'll be
12 referring to that in the lower corner. It's
13 really the best way to understand documents
14 produced in litigation. In the lower right, it
15 says, MNK, showing that it was produced by
16 Mallinckrodt, 04024815 through 16.

17 This document was prepared by
18 Steve Cartt on -- on or around June 29th, 2007,
19 and it was sent to senior executives within
20 Questcor at the time. You'll see the email says,
21 Dear Board Members, attached is a diagram
22 outlining our new Acthar distribution system.

23 Do you see that reference?

24 Just in the email, I'm just making
25 sure you're following with me.

1 A Yes.

2 Q All right. He says, Please use
3 this as a reference during Monday's update on the
4 specialty pharmacy transition. We'll be happy to
5 go through this and answer any questions the
6 Board of Directors may have.

7 Do you see that?

8 A Yes, sir.

9 Q On the -- on the following page is
10 a graphic for this new Acthar distribution
11 system. I like this document, because it's
12 simple. It -- it shows the product flow of
13 Acthar after Questcor contracted with CuraScript
14 to relaunch Acthar back in 2007.

15 Are you familiar with that re- --

16 MR. FORST: Objection to the
17 characterization of the document. It --

18 MR. HAVILAND: Hold on. Hold on,
19 Counsel. You can't cut off my --

20 MR. FORST: You can't testify.

21 MR. HAVILAND: Well, you can't cut
22 off my question.

23 MR. FORST: Are you asking what the
24 document says?

25 MR. HAVILAND: This is not going to

1 go well --

2 MR. FORST: It wasn't a question.

3 MR. HAVILAND: It's not going to go
4 well if I can't finish my question.

5 MR. FORST: Even if you talk
6 louder, it's not going to deter me. I'm
7 just saying --

8 MR. HAVILAND: Well, I wasn't done.

9 MR. FORST: But you're --

10 MR. HAVILAND: I'm going to ask him
11 again --

12 MR. FORST: -- you're describing
13 the document.

14 MR. HAVILAND: Yes, I am.

15 MR. FORST: Are you asking him if
16 he's seen it, what it shows, or are you
17 testifying? I just want to be clear.

18 MR. HAVILAND: This is going to be
19 very simple.

20 MR. FORST: All right.

21 MR. HAVILAND: I'm going to ask
22 questions.

23 MR. FORST: Okay.

24 MR. HAVILAND: You can object. And
25 if you speak, we're going to go really

1 long, and we're going to come back.

2 MR. FORST: That's fine. We will
3 do those things. I'll defend the
4 deposition, but I just said let's ask
5 questions, not give testimony.

6 BY MR. HAVILAND:

7 Q Dr. Miller, again, if you don't
8 understand my questions, I want you to tell me
9 so, and answer only the questions you understand,
10 because I want to know what you know.

11 Now, you have had an opportunity,
12 sir, to review this document; have you not?

13 You've had an opportunity to see
14 the graphic on page 2, right?

15 A Correct.

16 Q You were at Express Scripts,
17 overseeing, consulting, working with, folks
18 within CuraScript, including Rob Osborne, in
19 2007, right?

20 MR. FORST: Objection to the form.

21 THE DEPONENT: It's a large
22 company. I offered to assist these
23 people, but I would not characterize it as
24 I was overseeing their function.

25 BY MR. HAVILAND:

1 Q Okay. But if they needed consult
2 from a gentleman of your experience, they would
3 seek it, and at times, you would give it, right?

4 MR. FORST: Object -- objection,
5 calls for speculation, vague, ambiguous.

6 BY MR. HAVILAND:

7 Q All those things, but go ahead.

8 MR. FORST: And more.

9 But you can answer.

10 THE DEPONENT: I -- I was available
11 if they sought me out.

12 BY MR. HAVILAND:

13 Q All right. You were familiar, sir,
14 with the fact that CuraScript contracted with
15 Questcor for the exclusive distribution of
16 Acthar?

17 A I was not.

18 Q You were not.

19 You were not in 2007?

20 A No.

21 Q Did you ever become aware of the
22 fact that CuraScript contracted with Questcor for
23 the exclusive distribution of Acthar?

24 A Later on, I became aware that we were the
25 exclusive distributor of Acthar.

1 Q Tell me the context in which you
2 learned that fact.

3 A It was probably later in the middle of --
4 probably in the mid '20s -- 2010s, when actually
5 the -- it may have been when either the investor
6 community or others started questioning us about
7 it, probably after the litigation was filed.

8 Q The Rockford litigation?

9 A That's the only litigation I'm familiar
10 with. I -- yes.

11 Q Well, I'm only asking, because
12 there's a lot of litigation involving Acthar.

13 A Yeah, but --

14 Q You're referring to the Rockford
15 lawsuit in your answer?

16 A I believe so.

17 Q You're not referring to the Federal
18 Trade Commission lawsuit against Mallinckrodt
19 that preceded the Acthar lawsuit -- lawsuit?

20 A No.

21 Q You're not referring to the DOJ
22 investigation lawsuit in Philadelphia for
23 marketing and sales practices?

24 A No.

25 Q Okay. So, you learned about the

1 fact that Express Scripts, CuraScript, had an
2 exclusive distribution arrangement for Acthar
3 with Questcor that later became Mallinckrodt
4 after the Rockford lawsuit; is that fair?

5 A I believe that's true.

6 Q Okay. And do you recall who told
7 you that?

8 A No.

9 Q All right. Do you recall the
10 general context in which you learned that fact?

11 A At the time, there were lots of articles
12 in the press and others, and so it was -- so, I
13 think I came about the information mainly of the
14 general lay -- like any general lay public would.

15 Q And I had the pleasure of
16 Mr. Henry's company yesterday in Minneapolis, so
17 we went over a series of media pieces from -- we
18 only looked at 2014, after the Mallinckrodt
19 merger with Questcor, but we reviewed those media
20 pieces. And I won't do that with you. I
21 actually -- I have them in another place.

22 But you were familiar with the fact
23 that Mr. Henry, who was the head of
24 communications, would push out to leading
25 executives, including yourself, with FYI,

1 articles that involved Acthar, Mallinckrodt and,
2 at times, lawsuits?

3 MR. FORST: Objection to the form.

4 THE DEPONENT: So, I was familiar
5 with the drug. Familiarity with the drug
6 precedes actually even coming to Express
7 Scripts. Familiar with some of the price
8 hikes they had taken, but I was not -- was
9 not aware of their contractual
10 arrangements with our company.

11 BY MR. HAVILAND:

12 Q Until after the Rockford lawsuit,
13 when you became familiar, either through some
14 media pieces or otherwise, right?

15 A I believe so.

16 Q Well, let's talk about your
17 familiarity with the drug.

18 That was while you were a
19 practicing physician?

20 A It started in medical school.

21 Q Okay. What did you learn in
22 medical school?

23 A So, during pediatric rotation, when we'd
24 see someone with infantile spasm, it was the drug
25 of choice for treating infantile spasm.

1 Q And did you know what the cost was
2 at that time?

3 A No idea.

4 Q Okay. You -- you've come to learn,
5 have you not, that prior to Questcor acquiring
6 the product, it cost about \$50, right?

7 A Correct.

8 Q And after Questcor acquired the
9 product, they raised the price?

10 A Correct.

11 Q You've also come to learn that, in
12 2007, when Questcor contracted with CuraScript,
13 the price was raised even more, right?

14 MR. FORST: Objection, lack of
15 foundation, calls for speculation.

16 THE DEPONENT: I --

17 BY MR. HAVILAND:

18 Q Go ahead.

19 A So, I was -- I was vaguely aware that the
20 price of -- of this drug was substantially higher
21 than when it was launched, and obviously found
22 that problematic for our clients.

23 Q Did you ever investigate why the
24 price was raised?

25 A No.

1 Q Okay. Did you ever come to learn
2 that the price was raised in 2007 after
3 CuraScript entered into a series of contracts for
4 the exclusive distribution of Acthar with
5 Questcor?

6 A No.

7 MR. FORST: Objection to the form.

8 BY MR. HAVILAND:

9 Q All right. The exhibit that I put
10 in front of you, sir, has a -- shows a
11 distribution model, and if you could turn to that
12 page, this -- again, this is a Mallinckrodt
13 document, and on page 3, you see how it has "MD"
14 at the top?

15 A Yes, sir.

16 Q It says, Prescription called in.
17 Do you see that?

18 A Yes, sir.

19 Q And you're familiar with that? You
20 were a practicing physician for a while.

21 When you were prescribing a drug to
22 a patient, you'd write a prescription, right?

23 A Correct.

24 Q It's what doctors do every day?

25 A Correct.

1 Q And then a patient will take that
2 prescription, in the case of a pharmacy pill, to
3 CVS, Walgreens, and they'd fill that
4 prescription, right?

5 A Correct.

6 Q And that applies for brands and
7 generics, right?

8 A Correct.

9 Q With specialty, however -- and
10 you're familiar with this in your old Express
11 Scripts -- it doesn't work that way, right?

12 The specialty pharmacy isn't a
13 brick-and-mortar place a patient can walk into,
14 right?

15 A It's a brick-and-mortar place, but they
16 don't --

17 Q Fair enough.

18 A -- but it's not -- but patients do not
19 come to the specialty pharmacy.

20 Q In the specialty drug arena,
21 specialty pharmacies actually distribute the drug
22 sometimes to the patient's home to
23 self-administer, right?

24 A Correct.

25 Q In the case of Acthar, it's a

1 self-administered drug?

2 A Correct.

3 Q So, the graphic here shows that a
4 physician would call in a script -- I'm going to
5 skip over the hub for a moment that's depicted
6 here, but if you could look down to
7 CuraScript SP, you were familiar, back in 2007,
8 that Express Scripts had acquired and then owned
9 a specialty pharmacy by the name of CuraScript
10 Specialty Pharmacy, right?

11 A Correct.

12 MR. FORST: Object -- let me
13 just -- wait a beat, so I can get some of
14 these -- I can have a bunch of questions
15 ruled on.

16 MR. HAVILAND: That's fine.

17 THE DEPONENT: Sorry.

18 MR. FORST: So, objection to the
19 form.

20 But you can answer.

21 BY MR. HAVILAND:

22 Q And that entity was in the business
23 of fulfilling prescriptions of specialty
24 medications, right?

25 A Correct.

1 Q Including Acthar?

2 A Correct.

3 Q All right. And if you go back to
4 the graphic, you see from the box that says,
5 CuraScript SP, there's an arrow down that says,
6 Patient.

7 Do you see that?

8 MR. FORST: Again, objection, lack
9 of foundation.

10 But you can answer.

11 BY MR. HAVILAND:

12 Q I only asked, do you see that?

13 A Yes, sir.

14 Q And that's familiar to you, sir,
15 that in the area of specialty drugs, specialty
16 pharmacies will sometimes send the medication
17 directly to the patient's home to
18 self-administer, right?

19 A Correct.

20 Q There's no middleman; it goes from
21 the manufacturer to the specialty pharmacy --
22 we'll get to that in a moment -- and then it's
23 dispensed directly to the patient, in the case of
24 Acthar, right?

25 A I -- I believe that's how it works, yes.

1 Q Now, when you were a practicing
2 physician, you would administer it in the
3 hospital setting, I assume?

4 A My practice was all university-based.

5 Q Okay. And if a -- if a mother
6 presented in the hospital and had a child that
7 had infantile spasms, the hospital would
8 administer Acthar to that child in the hospital
9 setting, correct?

10 A Correct.

11 MR. FORST: Object -- object to the
12 form.

13 BY MR. HAVILAND:

14 Q And you'll see in the graphic
15 there's a hospital box there. It's a circle.
16 And that's directly beneath, CuraScript Specialty
17 Distribution.

18 Do you see that?

19 A Correct.

20 Q Okay. And when you were practicing
21 in the hospital setting, sir, you didn't have to
22 go to CuraScript to get the drug; you'd just go
23 to the hospital dispensary, right?

24 MR. FORST: Objection, vague,
25 ambiguous, calls for speculation.

1 THE DEPONENT: So, I don't know
2 where the hospital got the medication
3 from.

4 BY MR. HAVILAND:

5 Q My point was a little different.

6 If you had a child with IS, and --
7 can you describe that disease state for the jury
8 to understand what that is.

9 A So, it's a horrible complication that
10 children, predominantly under the age of 2, but
11 it can be up to the age of 5, get, where they
12 have seizures that, if uncontrolled, lead to
13 long-term deleterious effects for neurologic
14 development.

15 Q So, it's like an epileptic seizure,
16 but for an infant, right?

17 A Correct.

18 Q And it's -- it's -- the infant
19 doesn't -- is too young to know what's happening,
20 right?

21 A Correct.

22 MR. FORST: Objection to the form.

23 THE DEPONENT: Correct.

24 BY MR. HAVILAND:

25 Q So, the parents are the ones that

1 the physician talks to about using Acthar to
2 treat that, right?

3 A Correct.

4 Q And patients -- or the parents are
5 relying upon the doctor to prescribe the
6 appropriate therapy, correct?

7 A Correct.

8 Q And Acthar has treated infantile
9 spasms for 60 years? 70 years?

10 A It's been in the market since the early
11 '50s.

12 (Reporter clarification.)

13 THE DEPONENT: It has been in the
14 market since the early '50s, I believe.

15 BY MR. HAVILAND:

16 Q And Acthar is ACTH, right?

17 A It is an ACTH preparation.

18 Q Okay. And what do you mean by
19 that?

20 A So, Acthar is made from the pituitaries of
21 pigs, and so through a proprietary process, they
22 prepare an ACTH-type formula.

23 Q So, the ACTH, the active ingredient
24 in Acthar, comes from a pig's pituitary gland?

25 A Correct.

1 Q So, it's a biologic?

2 A Correct.

3 Q It's not something that comes out
4 of a lab, like some other innovative medications?

5 A It's --

6 MR. FORST: Objection to the form.

7 THE DEPONENT: They all come out of
8 labs, so --

9 BY MR. HAVILAND:

10 Q But I'm saying the active
11 ingredient in the ACTH in Acthar is porcine; it
12 comes from a pig?

13 A It comes from a pig, and it's a protein,
14 unlike a chemical medication.

15 Q Right. The -- the difference would
16 be a synthetic ACTH like Synacthen, right?

17 MR. FORST: Objection to the form.

18 THE DEPONENT: They -- in this
19 country, they're not equivalent.

20 BY MR. HAVILAND:

21 Q Why do you say that?

22 A The FDA has never approved a generic to
23 Acthar.

24 Q Well, that's a different question,
25 sir.

1 The FDA has never approved a
2 generic of Acthar, which is the porcine biologic
3 product that we've been talking about, right?

4 A They've never approved an alternative to
5 Acthar.

6 Q Okay. So, it's in a -- a class of
7 drugs of the -- by itself?

8 A Yes.

9 Q All right. So, you have spoken
10 about Acthar at times, and sometimes you've been
11 asked about Acthar. And there was an occasion,
12 sir, where you were with Everett Neville, when
13 the comment was made that, Acthar is not worth
14 what Express Scripts is charging for it.

15 Do you recall that?

16 MR. FORST: Objection to the form,
17 lack of foundation.

18 THE DEPONENT: So, Acthar, for many
19 indications, is not worth what they're
20 charging for it, correct.

21 BY MR. HAVILAND:

22 Q That's not quite what was said
23 during the Citibank conference, right?

24 MR. FORST: Objection to the form,
25 foundation.

1 THE DEPONENT: I would have to see
2 the -- I'd have to see what was said to
3 comment on that.

4 BY MR. HAVILAND:

5 Q Well, do you recall the conference,
6 the Citibank conference?

7 A I recall the Citibank conference, yes.

8 Q You were with Everett Neville?

9 A Yes.

10 Q Anyone else from the company?

11 A There were dozens of people there.

12 Q Okay. And during a Q&A,
13 Mr. Neville said that, I don't think it's worth
14 it. I think Dr. Miller would agree.

15 Do you recall that?

16 MR. FORST: Objection to the form,
17 lack of foundation.

18 BY MR. HAVILAND:

19 Q We can go to the transcript. I
20 just want to know what you remember, sir, before
21 I try to --

22 A So, I don't remember the --

23 MR. FORST: Okay. Let me just
24 object.

25 THE DEPONENT: Yes. Sorry.

1 MR. FORST: Objection to the form,
2 lack of foundation.

3 THE DEPONENT: So, I don't remember
4 the specifics of the conversation.

5 BY MR. HAVILAND:

6 Q Okay. You do recall that comment
7 being made, though?

8 MR. FORST: Objection to the form,
9 asked and answered.

10 THE DEPONENT: I recall comments
11 that were similar to that, but not -- I
12 don't know the exact comments that were
13 made.

14 BY MR. HAVILAND:

15 Q Okay. And what was your takeaway
16 about those comments?

17 Did you agree that Acthar was not
18 worth what Express Scripts was charging for it?

19 MR. FORST: Objection to the form,
20 foundation.

21 THE DEPONENT: So, Acthar has
22 limited utilization. For most of the
23 indications that they're listed for, it is
24 not of much value. There are better
25 drugs. For a couple of indications, it's

1 still the leading product, and -- and
2 so -- but it's -- you know, it's priced
3 very aggressively, and so I was very clear
4 about not appreciating the price.

5 BY MR. HAVILAND:

6 Q And what are the indications
7 that -- you say it's limited utilization for most
8 indications.

9 What are you referring to?

10 A So, they have some 17 or 19 potential
11 indications. For almost all of those, it's a
12 poor choice. For a couple indications,
13 especially infantile spasm, it's still one of the
14 leading drugs for treating infantile spasm, even
15 in the year 2022.

16 Q So, by your answer, are you
17 suggesting that Acthar is worth what Express
18 Scripts charges for it for infantile spasms?

19 MR. FORST: Objection to the form
20 of the question.

21 THE DEPONENT: So, we don't -- we
22 attempt to evaluate if drugs are, quote,
23 "worth what they're charged," but
24 that's -- to be very honest, it's mostly
25 opinion. It's not -- there is very --

1 it's very difficult to put a value on
2 drugs.

3 So, there are organizations that
4 actually attempt to do that, and we work
5 with those organizations, but the
6 marketplace determines the value of
7 products.

8 BY MR. HAVILAND:

9 Q Well, Express Scripts is the
10 largest pharmacy benefit manager in the
11 marketplace, right?

12 A No.

13 Q It's not?

14 A CVS is.

15 Q Oh, today they are, right. There
16 was a time when Express Scripts was the biggest?

17 A I believe so, yes.

18 Q That's why time matters. We have
19 to decide what time we're talking about with all
20 the mergers and acquisition.

21 The role of PBMs, though, as a
22 middleman, is to try to leverage that buying
23 power, representing all the payers and health
24 plans, to try to get lower costs, right?

25 MR. FORST: Objection to the form.

1 THE DEPONENT: So, we aggregate
2 membership with the -- so that we actually
3 put more leverage and -- upon the
4 pharmaceutical industry, correct.

5 BY MR. HAVILAND:

6 Q Yesterday, when I asked similar
7 questions of Mr. Henry about how Express Scripts
8 tries to drove -- drive lower costs and make
9 medicines more affordable, he said there were two
10 principle functions, and I want to see if you
11 agree.

12 The first is through direct
13 contracting with pharmaceutical companies and
14 trying to extract lower prices or price
15 concessions; and the second was utilization
16 management.

17 Do you generally agree with that?

18 MR. FORST: Objection to the form.

19 Again, lack of foundation.

20 THE DEPONENT: Yes.

21 BY MR. HAVILAND:

22 Q All right. And I know you've
23 already given me some information about the
24 latter, utilization management, in terms of
25 making sure that drugs are not overly prescribed

1 for uses and -- and areas that they may not be as
2 efficacious. I want to focus on the first part
3 of it and understand what you know about Express
4 Scripts' role in negotiating with pharma for
5 lower prices.

6 Can you answer that?

7 MR. FORST: Objection to the form.

8 Was there a question?

9 THE DEPONENT: What's the question?

10 BY MR. HAVILAND:

11 Q So, I -- I thought what Mr. Henry
12 said yesterday was very helpful in terms of kind
13 of putting into buckets the ways in which Express
14 Scripts can try to make drugs more affordable.

15 And, obviously, beneath these
16 buckets, there's a lot to it, but in the first
17 way, it's through direct pharmaceutical
18 negotiations and contracting with drug companies,
19 right?

20 A Correct.

21 Q The second way is the broad group
22 of utilization management, and there, you've got
23 formulary controls, step therapies, prior
24 authorizations, exclusions, edits, a host of
25 things that we'll talk about a little later.

1 But you generally agree there are
2 those two tools that PBMs have?

3 A Those are the major two, yes. Correct.

4 Q Okay. And I want to know what you
5 know about the first tool and how Express
6 Scripts, during the time that you've been with
7 Express Scripts, now Cigna, has used that tool in
8 negotiations with pharmaceutical companies to
9 drive lower costs.

10 A Great.

11 Q Okay.

12 A So, there are -- when a drug comes to the
13 market, they're placed in one of three buckets.
14 There are drugs that are called clinical
15 includes. These are drugs that you have to have
16 on a formulary. There's no alternative to them.
17 And so in those particular cases -- and that's
18 about 15 percent of drugs -- we become a price
19 acceptor, because we have no leverage on those
20 drugs.

21 On the other extreme, there are
22 what are called clinical excludes. These are
23 drugs that are on the marketplace, but have no
24 role in modern therapy. So, these are often
25 older drugs that haven't been withdrawn from the

1 marketplace. So, I'll give you an example.
2 Aldomet, it's an old anti-hypertensive drug. You
3 have to take it three times a day, it has lots of
4 side effects, and so there is no reason for
5 someone to prescribe Aldomet. Less than 1
6 percent of drugs fit into that category.

7 Q Okay.

8 A 85 percent of drugs are what are called
9 clinically optional, and that is these are drugs
10 where there is -- there could be a competitor to
11 those drugs, we can pit them against each other,
12 and that's where we can get the majority of the
13 savings for patients and plan sponsors, because
14 that's where we can get the pharmaceutical
15 companies to negotiate on price.

16 Q Where do you fit Acthar in those
17 three buckets?

18 A So, Acthar, for the majority of its time,
19 has been in the clinical include. It was
20 something you had to have on a formulary.

21 Q And you say "majority." Has that
22 changed?

23 A It was changed in I believe 2017 or 2018.

24 Q '17 or '18, you said?

25 A Yeah, I'd have to look at the documents.

1 Q And why was it changed?

2 A It was changed initially in our Medicare
3 formulary, and the reason was, for adults, they
4 don't -- adults don't have infantile spasm, and
5 for adults, there were better drugs for all the
6 indications for adults.

7 Q Including multiple sclerosis?

8 A Including multiple sclerosis.

9 Q Okay. And what about in the
10 commercial payer side?

11 A So, the commercial payer side, I believe,
12 lacked -- I don't know what its status is today
13 in the commercial payer side, because they have
14 infants, and so I don't know what the current
15 status is there. But I know in the Medicare, we
16 made that change.

17 Q And -- and you say "that change."

18 Was that a change by the Pharmacy
19 and Therapeutics Committee of Express Scripts?

20 A Correct.

21 Q Okay. And let's -- let's explore
22 that a little bit. It's sometimes also known as
23 a P&T Committee?

24 A Correct.

25 Q So, if I use "P&T," you'll know

1 that's the Pharmacy and Therapeutics Committee?

2 A Yes, sir.

3 Q And what's their function?

4 A So, in Express Scripts, we have a
5 completely independent Pharmacy and Therapeutics
6 Committee. We're very proud that it's been
7 recognized as the gold standard by which you
8 should do this, because it's a -- of its
9 independence. We do not even chose the members
10 of committee.

11 So, the committee is made up of
12 specialists across all -- almost all the areas in
13 healthcare. They evaluate drugs totally
14 financially blind, and their role is to come up
15 with a formulary of listed drugs that would allow
16 doctors to treat essentially any condition that
17 they encounter.

18 Q Okay. There is an interface
19 between the company and the P&T Committee, and
20 specifically I'm thinking of Mr. Behm?

21 A Correct. So, Andy oversees OCEP, the
22 Office --

23 Q You're going to have to help us
24 with that one.

25 A The Office of Clinical Evaluation and

1 Policy. They prepare the information for the
2 P&T Committee. So, they gather the FDA filings,
3 studies, all the information that they can, so
4 that the P&T Committee can opine on the relevance
5 of the drug.

6 Q Okay. And is it accurate that the
7 product of the -- so, OCEP is an Express Scripts
8 branch, right?

9 A It's a -- part of our organization, yes.

10 Q Yeah. The committee -- the
11 P&T Committee is this independent organization,
12 right?

13 A Correct.

14 Q And other than Mr. Behm, does he
15 have folks within his group that are part of the
16 interface of OCEP with the -- with the committee?

17 A Yeah. So, they staff the committee.

18 Q What do you mean by that?

19 A They're the ones providing -- they produce
20 monographs of the drugs for the committee to have
21 the information they need to make their
22 determination.

23 Q Okay. And the determinations of
24 the P&T Committee, as overseen by OCEP, is that
25 what determines where drugs fall in these three

1 buckets; clinical includes, clinical optional,
2 or --

3 A Yes, it is the P&T Committee that
4 determines their designation.

5 Q Okay.

6 MR. FORST: Dr. Miller, just wait
7 for Don to finish his question.

8 THE DEPONENT: Sorry.

9 BY MR. HAVILAND:

10 Q Yeah, I was actually looking for a
11 third bucket, but thank you. It's -- it was
12 includes, excludes, and optional. Sometimes I
13 can't read my own left-handed writing here.

14 And so, sometime in '17 or '18 --
15 you're not sure what year -- Acthar was moved
16 from one bucket to another.

17 Can you tell the jury what -- how
18 that shift happened.

19 A So, there are many different formularies.
20 There are commercial formularies, Medicare
21 formularies. And so, on the Medicare formulary,
22 which is just, you know, for the most part,
23 adults, seniors, it -- I know it was shifted at
24 that point in time.

25 Q I just want to be clear, too, from

1 an include to exclude or optional?

2 A Optional.

3 Q It went to optional. Okay.

4 And that was for the government,
5 Medicare?

6 A The government's the payer in Medicare.

7 Q Right.

8 (Reporter clarification.)

9 THE DEPONENT: The government is
10 the payer in Medicare.

11 BY MR. HAVILAND:

12 Q And that's largely because Medicare
13 doesn't have infants?

14 A Correct.

15 Q Yeah. And was there a similar
16 shift, or at least change in policy, in the
17 commercial payer side with respect to
18 formularies, given that there was this shift in
19 Medicare?

20 MR. FORST: Objection, asked and
21 answered.

22 THE DEPONENT: You -- I do not
23 know.

24 BY MR. HAVILAND:

25 Q Okay. Do you know what drove that

1 decision to change?

2 Help me with -- when I asked you
3 about the -- the -- just the market and the -- we
4 were working through the PBMs, what do you call
5 these three buckets?

6 In terms of the designations, it's
7 a way to ascribe a drug to a different class;
8 include, exclude, or optional?

9 MR. FORST: Objection to the form.

10 BY MR. HAVILAND:

11 Q I'm just trying to have a better
12 term of art to say than the "three buckets."

13 These are the designations that are
14 used by the PBM to sort drugs?

15 A They're used by OCEP to sort drugs.

16 Q Oh, okay. That -- now, I get it.
17 So, this is -- these are OCEP designations for
18 drugs?

19 A Correct.

20 Q And do they review the whole
21 universe of drugs out there in terms of trying to
22 bucket them?

23 A I probably can't give you -- I -- it's
24 probably a better question for Andy Behm, who
25 oversees the process.

1 Q I have him next week -- or the week
2 after. That's fair. And if you don't know, sir,
3 it's -- it's fine. I do want to make sure that I
4 exhaust your -- your knowledge, but there may be
5 others who know more.

6 So, you don't know if, at the time
7 the change from include -- and I just -- I have
8 to be clear, because I'm not yet.

9 Was the change in designation in
10 the Medicare formulary to -- from include to
11 exclude --

12 MR. FORST: Objection.

13 BY MR. HAVILAND:

14 Q -- or optional?

15 A It was from include to optional.

16 Q Okay. What does "optional" mean?

17 A That means there are competitive products,
18 and those can be pitted against each other.

19 Q Okay. And optional applies to a
20 drug regardless of who's paying for it, right?

21 A No.

22 Q It doesn't?

23 A Different formularies for different
24 payers.

25 Q No, I'm -- I'm -- I'm saying, when

1 you say that they're -- it's designated optional,
2 because there's other competitive agents that are
3 better, that applies to the drug, not necessarily
4 who's paying for it?

5 MR. FORST: Objection to the form.

6 THE DEPONENT: It applies to the
7 drug on that formulary.

8 BY MR. HAVILAND:

9 Q Right. So Acthar, as optional, the
10 committee and OCEP recognize that there are
11 better treatments for certain indications than
12 Acthar?

13 MR. FORST: Objection,
14 mischaracterizes testimony.

15 BY MR. HAVILAND:

16 Q You can answer.

17 A So, it may be that they're either better,
18 because they're more cost effective; or better,
19 because they are more clinically effective.

20 Q Well, the P&T Committee doesn't
21 look at cost, sir, right?

22 A So, the OCEP and the P&T Committee develop
23 a formulary. It goes to another committee that
24 applies a price component, called the VAC
25 committee, the Value Assessment Committee.

1 They're the ones that actually add a financial
2 lens. So, the P&T Committee never sees financial
3 information. It goes to this separate committee
4 called the VAC committee. The VAC --

5 Q You're saying V-A-C?

6 A VAC, Value Assessment Committee. They add
7 a financial lens to it, and then it comes back to
8 the P&T Committee to be -- get formal approval.

9 Q So, what does the P&T Committee see
10 after the VAC has done its assessment?

11 A A list of drugs with the -- essentially
12 the question of, Can any doctor treat any illness
13 that they may encounter with this list of drugs?

14 Q And they're just listed blind to
15 cost?

16 A Yes, sir.

17 Q They're not ranked?

18 A Just blind to cost.

19 Q Okay. And then how does the VAC
20 assessment and the P&T Committee assessment get
21 put together in terms of Express Scripts
22 formularies for Medicare or the private
23 commercial payers?

24 A So then the OCEP committee -- or the OCEP
25 group puts together a formulary document that is

1 syndicated through to the appropriate parts of
2 the organization.

3 Q I see. And then they're offered to
4 commercial payers to accept the formulary
5 recommendation?

6 A So, the commercial payers, and there are,
7 like I said, many different types of formularies.

8 Q Sure. Okay. The VAC assessment --
9 the Value Assessment Committee, is there someone
10 who headed that up?

11 A Yes.

12 MR. FORST: Objection, time frame.

13 MR. HAVILAND: Yeah, we're going to
14 get there.

15 BY MR. HAVILAND:

16 Q So, do you know who it is
17 presently?

18 A I could guess, but I don't know for sure.

19 Q What's the first time you remember
20 someone who headed that group?

21 A When I came to the organization in 2005,
22 there were people who had -- it's always had
23 someone who's headed the group.

24 Q I'm just looking for a name, sir.

25 A Oh.

1 Q I've seen VAC, and you finally put
2 some teeth to what it is.

3 A Yeah, I can't -- I mean --

4 Q It's not Andy Behm?

5 A No.

6 Q Okay. And it's an actual committee
7 within what area of Express Scripts?

8 A So, OCEP reports to Andy. Andy reports up
9 to me. The VAC committee sits within the supply
10 chain of the organization.

11 Q Procurement?

12 A We call it supply chain.

13 Q Mr. Neville's group?

14 MR. FORST: Object to the form.

15 THE DEPONENT: It depends on which
16 time frame.

17 BY MR. HAVILAND:

18 Q Okay. Was the VAC committee part
19 of the supply chain group headed by Mr. Neville
20 back in 2017, 2018?

21 A I would have to reference documents. I
22 don't know off the top of my head.

23 Q Okay. Well, you -- and I'm only
24 going to go to the time prior to the end of '21,
25 when Mr. Wentworth was the CEO. And really, it's

1 easier even before Cigna, because now you have
2 Evernorth, and you have some overlays. It gets a
3 little complicated.

4 So, when -- when the PBM was a
5 stand-alone business, with Mr. Wentworth as the
6 CEO, you were a direct report?

7 A Yes, sir.

8 Q Mr. Neville was?

9 A Yes, sir.

10 Q Glen Stettin was?

11 A Yes.

12 Q And others? There was a leadership
13 group that all reported up into Mr. Wentworth,
14 right?

15 A Correct.

16 Q And supply chain was a function
17 within Express Scripts that had a lead that
18 reported up to Mr. Wentworth, right?

19 A Correct.

20 Q And is it accurate that Mr. Neville
21 held that position at some point in time?

22 A Correct.

23 Q Okay. And I know when you changed,
24 and then you changed business functions, it gets
25 complicated?

1 A Yes.

2 MR. HAVILAND: All right. Who
3 knows what time it is? Because I don't
4 want to go too long in our first --

5 MR. FORST: It's been about an
6 hour.

7 MR. HAVILAND: Just let me finish
8 up with a couple questions, we'll take a
9 break. All right?

10 BY MR. HAVILAND:

11 Q Circling back to the -- the two
12 tools that a PBM like Express Scripts uses to
13 drive lower costs, what do you know about what
14 Express Scripts has done to try to drive down the
15 cost of Acthar either with Questcor or
16 Mallinckrodt?

17 And in answering my question, sir,
18 I -- I don't want to shade into utilization
19 management controls, prior authorization, things
20 like that, because I only want you to focus on
21 that tool, that tool, and how, if at all, to your
22 knowledge, has the PBM used its power to directly
23 negotiate with Mallinckrodt and Questcor to drive
24 down lower costs of Acthar?

25 MR. FORST: Objection to the form.

1 Again, you can answer however you
2 best think it needs to be answered.

3 THE DEPONENT: So when you think
4 about the lever of competitive drugs,
5 being able to compete against another
6 product, because of the designation of
7 clinical include, there -- it means there
8 is no competitive product. We have almost
9 no -- essentially no capability to compete
10 the price down lower.

11 So, then we can -- and this is --
12 sort of gets away from your question
13 slightly in that, so then the best tool we
14 have for our clients is utilization
15 management, making sure it's only utilized
16 in the most appropriate circumstances.

17 And then a third thing that we've
18 done is -- and probably uniquely us, is
19 that we've tried to use the bully pulpit
20 to bring this to light and put pressure on
21 companies.

22 BY MR. HAVILAND:

23 Q By that, you mean media exposure
24 and commentary?

25 A Yep.

1 MR. HAVILAND: Okay. The first
2 break in the morning is important for
3 everyone, so why don't we take our first
4 break, and we'll be back in about 10
5 minutes or so.

6 (Discussion held off the record.)

7 THE VIDEOGRAPHER: We're going off
8 the record at 10:01 a.m.

9 (Break taken.)

10 THE VIDEOGRAPHER: We are back on
11 the record at 10:14 a.m.

12 BY MR. HAVILAND:

13 Q Dr. Miller, before the break, I had
14 asked you to tell me what you knew about how, if
15 at all, Express Scripts used its power as a PBM
16 to negotiate a lower price for Acthar directly
17 with Mallinckrodt or Questcor, and you gave me
18 three responses. You said, number one, there's
19 no competitive product like Acthar, and I'll get
20 to your other two responses, sir.

21 And by that answer, do you agree
22 with me that, at no point in time, to your
23 knowledge, did anyone from Express Scripts in
24 negotiations with Questcor or Mallinckrodt seek
25 to lower the price of Acthar?

1 MR. FORST: Objection to the form.

2 THE DEPONENT: I have no idea.

3 BY MR. HAVILAND:

4 Q You have no knowledge of whether
5 that ever happened?

6 A Correct.

7 Q Knowing what you know about Acthar
8 and the number of times it was brought up in the
9 media in your presence, did you ever ask anyone
10 at Express Scripts, Have we ever sought to get
11 Questcor or Mallinckrodt to lower the price?

12 A I'm not in the supply chain, so I don't
13 deal with those negotiations. I assume they do
14 their job to the best of their ability.

15 Q So, that wasn't my question, sir.
16 I just wanted to know if, in your role of being
17 the chief medical officer of the company, and
18 having interface with multiple functions within
19 Express Scripts, did you ever ask whomever had
20 the ability to do something in terms of lowering
21 the price directly with the manufacturer, did you
22 ever ask, Have we, Express Scripts, ever gone to
23 Questcor or Mallinckrodt and sought to lower the
24 price of Acthar?

25 MR. FORST: Objection, lack of

1 foundation, assumes facts not in evidence,
2 calls for speculation.

3 THE DEPONENT: So, I can tell you
4 specifically for me, knowing there was no
5 competitive products, and that that was
6 not a viable lever, that's why I was very
7 vocal in using the bully pulpit to try to
8 pressure them to lower the price, which
9 may or may not be effective, but that's,
10 in my role, the most effective thing I can
11 do is to make sure, A, we have the
12 appropriate utilization management, and B,
13 that we made it publicly clear that the
14 price was egregious.

15 BY MR. HAVILAND:

16 Q Okay. And they're the two other
17 aspects to your answer, when I asked what has
18 Express Scripts done to use its power to
19 negotiate a lower price; utilization management
20 and the bully pulpit in the media.

21 But I want to know specifically,
22 sir, if you ever said to anyone, Mr. Wentworth,
23 Mr. Neville, Rob Osborne, anyone in the
24 organization, Have we ever gone to the
25 manufacturer and asked for a lower price?

1 A I'm -- I never have asked that about any
2 drug.

3 Q Okay. Is it because it's just not
4 what you do, or is it something else?

5 A It's because that's what the company does
6 every day.

7 Q But you don't do that?

8 A I said that's what the company does every
9 day --

10 Q Right.

11 A -- but it's not what I do specifically.

12 Q It's not what you do, right. I'll
13 get to the bully pulpit in a moment.

14 That's just using public exposure
15 to try to get the manufacturer to do the right
16 thing, right?

17 MR. FORST: Objection to the form.

18 THE DEPONENT: That'd be the
19 intent, yes.

20 BY MR. HAVILAND:

21 Q And in your entire time at Express
22 Scripts, the price of Acthar has never gone down?

23 A No.

24 Q All right. So, the bully pulpit
25 has not worked?

1 MR. FORST: Objection.

2 THE DEPONENT: Don't know. I don't
3 know what the price would be absent the
4 bully pulpit.

5 BY MR. HAVILAND:

6 Q Oh, you think it might be even
7 higher?

8 A Potentially.

9 Q Okay. And I asked you what you
10 knew about how the product is distributed and how
11 it's priced, and I realize that's not your direct
12 role, but in your efforts to try to get some
13 affordable lever for Acthar, did you come to
14 learn that Express Scripts has exclusive
15 distribution rights and preferred pharmacy rights
16 for Acthar?

17 A I'm aware of that now, but I was not aware
18 of that then.

19 Q Knowing what you know -- and when
20 you say "now," it's back when you learned about
21 in the context of the -- the media that you
22 described there? You don't mean now, 2022; you
23 knew that fact some time ago?

24 A Correct.

25 Q Right. Did you learn that

1 CuraScript Specialty Distribution had an
2 exclusive distribution contract with Questcor and
3 then Mallinckrodt that gave it the ability to not
4 approve a price increase in writing?

5 MR. FORST: Objection to the form,
6 lack of foundation, calls for a legal
7 conclusion.

8 THE DEPONENT: I have no idea
9 what's in the contract.

10 BY MR. HAVILAND:

11 Q Okay. And again, did you ever ask
12 anyone within Express Scripts, Do we have the
13 power, through our exclusive distribution
14 arrangement -- let me just back that up.

15 Acthar is not the only product that
16 CuraScripts has exclusive distribution rights
17 for, right?

18 MR. FORST: Objection to the form.

19 THE DEPONENT: Correct.

20 BY MR. HAVILAND:

21 Q I've talked to Ms. Johnston,
22 JPL (phonetic) Johnston, the former president.

23 You were familiar with her?

24 A Yes.

25 Q I've talked to Earl English, her

1 successor.

2 You were familiar with him?

3 A Yes.

4 Q And I've talked to Bill Shirey, the
5 current president of CuraScript.

6 Do you know him?

7 A Yes.

8 Q All right. And each of those
9 executives confirmed that at no time did
10 CuraScript Specialty Distribution say no to a
11 price increase by Questcor or Mallinckrodt.

12 Does that surprise you?

13 MR. FORST: Objection to the
14 testimony, lack of foundation, calls for
15 speculation.

16 THE DEPONENT: I don't -- you know,
17 I -- it's -- you know, they do their job.
18 I do my job. I can't really speculate on
19 what --

20 BY MR. HAVILAND:

21 Q You're familiar with the fact that
22 there's more than 30 exclusive specialty drugs in
23 the portfolio of CuraScript now, right?

24 A Yes. I mean, we're very proud that we
25 provide a service where people seek us out to

1 distribute their products.

2 Q And those exclusive drugs are some
3 of the most expensive specialty drugs; are they
4 not?

5 A That's correct.

6 Q Have you ever inquired as to
7 whether or not it's a function of the exclusivity
8 that is keeping the prices high?

9 A So, sometimes the FDA requires
10 exclusivity, because the drug is so -- has
11 special requirements for -- I'll give you an
12 example. Xyrem's a drug for narcolepsy. There
13 has to be a registry of every physician that
14 prescribes it. So, the FDA has deemed it
15 appropriate that it's exclusively distributed.

16 There are other drugs, because of
17 handling requirements, training requirements,
18 registry requirements, other things, and so
19 there's a variety of reasons by which drugs are
20 handled or provided exclusively through one
21 distributor.

22 Q Well, in the case of Acthar, sir,
23 before you came to the company, and even from '05
24 and '07, you were aware, were you not, that it
25 was widely distributed?

1 A I --

2 MR. FORST: Objection to the form.

3 THE DEPONENT: I was not aware.

4 BY MR. HAVILAND:

5 Q Okay. Did you come to learn that
6 fact?

7 MR. FORST: Objection to the form.

8 THE DEPONENT: Just now.

9 BY MR. HAVILAND:

10 Q Well, by definition, if CuraScript
11 got the exclusive rights, which you testified you
12 learned, there was a time where it didn't have
13 exclusivity, right?

14 A But it -- I do not know if they were in
15 a -- with an exclusive distributor prior to that
16 and switched distributors.

17 Q Okay. And you don't know how your
18 hospital was able to acquire the product when you
19 were dispensing it to patients?

20 A I --

21 MR. FORST: Object -- objection to
22 the form of the question.

23 THE DEPONENT: I do not.

24 BY MR. HAVILAND:

25 Q Okay. Did you ever encounter a

1 situation where there was a delay in being able
2 to administer Acthar to a baby?

3 A I've never prescribed Acthar.

4 Q Oh, I thought you did.

5 A No, I said I was a medical student. I had
6 seen babies on Acthar. I never prescribed
7 Acthar.

8 Q I see. As a medical student, you
9 saw infants with infantile spasms that got
10 Acthar?

11 A Correct.

12 Q You never, yourself, prescribed it?

13 A I'm not a pediatrician, and don't --

14 Q Fair enough. While you were a
15 student, did you notice that there was any
16 appreciable delay in being able to get that
17 medication for the baby?

18 MR. FORST: Objection to the form.

19 THE DEPONENT: As a student, I
20 would have no clue if there was a delay in
21 getting a medication to a -- a patient.

22 BY MR. HAVILAND:

23 Q Well, you might know if the mother
24 was upset after four days, wouldn't you, sir?

25 A I didn't -- you know, when you're on a

1 pediatric rotation, you're not doing continuity
2 of care in an intensive care unit, so I would --
3 I would have no clue.

4 Q So, the situation you described,
5 where the FDA mandates exclusivity, you agree
6 with me that doesn't apply to Acthar?

7 A I believe not.

8 Q Acthar is simply a drug where
9 there's some special handling requirements?

10 MR. FORST: Objection to the form.

11 THE DEPONENT: I don't even -- I
12 don't know. It's not my area of
13 expertise.

14 BY MR. HAVILAND:

15 Q So, you can't describe what's
16 special about the distribution of Acthar as
17 opposed to any other drug; is that fair?

18 A Correct.

19 Q All right. I'm going to mark, as
20 Exhibits 3 and 4 to your deposition, sir, two
21 media pieces.

22 (Exhibits 3 and 4 were marked.)

23 MR. FORST: Which one is which?

24 BY MR. HAVILAND:

25 Q Dr. Miller, the first exhibit, the

1 article with the press release from Questcor, is
2 Exhibit 3 to your deposition.

3 MR. HAVILAND: For those on the
4 Zoom, it's Bates-numbered MNK0081796
5 through 798; and the second is a Business
6 Wire release that does not have Bates
7 numbers. It's a public document.

8 BY MR. HAVILAND:

9 Q Do you recall seeing any press
10 releases about the relaunch of Acthar by Questcor
11 in 2007?

12 A No.

13 Q I'm going to focus on the --
14 Exhibit 3, which is the Questcor release, only
15 because it has the Bates number. I believe that
16 the Business Wire is identical to what was
17 released by Questcor. If you follow with me,
18 sir, I'm just going to skip through a couple
19 places.

20 You see it was released on
21 August 27, 2007?

22 A Yes, sir.

23 Q There's a general description of
24 Acthar. If you go down to where it says, Don M.
25 Bailey. Let me know when you have that.

1 A Yes, sir.

2 Q "Questcor's interim president" --
3 let me stop there.

4 Did you ever meet Mr. Bailey?

5 A Not that I remember.

6 Q Okay. "Don Bailey commented, The
7 goal of Questcor's new strategy is to make
8 manufacturing and distribution of Acthar
9 economically viable on a stand-alone basis, so
10 that Questcor can continue to ensure the
11 availability of Acthar for those patients who
12 need it most and fund projects, which can --
13 which can contribute to the growth of the
14 company."

15 Did I read that correctly?

16 A Yes.

17 Q And if you skip down with me, sir,
18 there's a paragraph that reads, The
19 implementation. Let me know when you have that.

20 It's about a third of the way.

21 A Yes. Got it.

22 Q Okay. "The implementation of this
23 new strategy includes a change in the method of
24 distribution for Acthar and a significant
25 increase in the treatment costs."

1 Do you see that?

2 A Yes.

3 Q You were aware, were you not, of
4 the significant increase in the treatment cost
5 for Acthar; were you not?

6 MR. FORST: Objection to the form
7 of the question.

8 THE DEPONENT: I knew that Acthar
9 was expensive. I did not know about
10 increases in cost at the time.

11 BY MR. HAVILAND:

12 Q And you didn't know that it was a
13 strategy of Questcor to change the distribution
14 of Acthar in order to raise the treatment cost to
15 fund future projects at the company?

16 MR. FORST: Objection,
17 mischaracterizes the document, but asked
18 and answered.

19 THE DEPONENT: Nope.

20 BY MR. HAVILAND:

21 Q Okay. And other than learning
22 later, while at Express Scripts, is it fair to
23 say you didn't know in 2007 that CuraScript
24 played a role in assisting Questcor to change its
25 distribution of Acthar; is that fair?

1 MR. FORST: Objection to the form.

2 THE DEPONENT: Correct.

3 BY MR. HAVILAND:

4 Q All right. I'm going to show you
5 another document from that time frame.

6 Do you remember Jerry Carino?

7 A Yes.

8 Q Who was he? And this is in '07,
9 sir.

10 A You know, I don't know exactly what
11 Jerry's role was. I just remember the name from
12 CuraScript.

13 Q Sure. I'm going to show you what
14 I've marked as Exhibit 5 to the deposition.

15 A Thank you.

16 (Exhibit 5 was marked.)

17 MR. HAVILAND: There you are.

18 BY MR. HAVILAND:

19 Q Exhibit 5 is the Bates number
20 MNK00082108. It's an email from Steve Cartt to
21 Jerry Carino of Express Scripts, with a carbon
22 copy to Rob Osborne and Greg Isaak. We've talked
23 about Mr. Osborne.

24 Do you know who Greg Isaak was?

25 A No.

1 Q Okay. I believe, from his email,
2 he worked with HealthBridge.

3 Were you familiar with the hub
4 operation that Express Scripts owned called
5 Health- -- Healthbridge?

6 A Yes.

7 Q All right. Obviously, Mr. Osborne
8 was with CuraScript. In this email -- and this
9 is a few months after the relaunch that we looked
10 at as described in the press -- the August 27
11 press release in Exhibits 3 and 4.

12 November 9, 2007, Mr. Cartt says,
13 Dear Jerry, when we met in person in Braintree --
14 and that -- that's where Healthbridge was
15 located, right, sir, in Massachusetts?

16 A I believe so, correct.

17 Q "When we met in person in Braintree
18 several weeks back, you had said to let you know
19 if I needed anything regarding our account at
20 Healthbridge. I think we are now at the point
21 where I need your help. As Rob or Greg can tell
22 you, we haven't been satisfied with
23 Healthbridge's performance overall and seem to
24 have hit a wall in terms of improving the
25 processing of referrals for our lead product,

1 Acthar Gel. By the way, following the price
2 increase, of -- Acthar is on a 100 million annual
3 run rate, so this product is becoming far larger
4 than any of us had originally expected.
5 Therefore, as I'm sure you would agree, the
6 demands on all of us are higher to deliver
7 performance."

8 And then briefly, the following
9 paragraph, he says, We feel the only way to get
10 the referral turnaround times down to where we
11 need them, two to three days, instead of the
12 current four days, may be well to move the hub to
13 Orlando and made it -- make it part of the SP.

14 And I think that refers to
15 specialty pharmacy. Seeing this email written by
16 Questcor's Steve Cartt to some folks at Express
17 Scripts, were you aware that, after the change in
18 distribution, there was a change in the
19 turnaround times for Acthar getting to patients?

20 A No.

21 MR. FORST: Objection.

22 BY MR. HAVILAND:

23 Q Okay. Were you privy to any
24 discussions about what Express Scripts was doing
25 to address that within its organization, whether

1 to move the hub from Massachusetts to CuraScript
2 in Florida or anything else?

3 A No.

4 Q Okay. You see that, after the
5 price increase, which you see took place in
6 August, Mr. Cartt estimates that Acthar was on a
7 100 million annual run.

8 Do you see that?

9 A Yes.

10 Q That's a significant amount of
11 money, is it not, sir?

12 MR. FORST: Objection to the form.

13 THE DEPONENT: Yes.

14 BY MR. HAVILAND:

15 Q I'm going to show you Rob Osborne's
16 notes after that email. This is Exhibit 6 to
17 your deposition, sir.

18 (Exhibit 6 was marked.)

19 BY MR. HAVILAND:

20 Q We -- we've spoken to Mr. Osborne a
21 couple times in this case, and I'll -- I'll
22 represent, for the record, this comes from his
23 files. This is a series of bullet points
24 prepared by him.

25 MR. FORST: Okay. But before the

1 question, I'll just object to the
2 characterization of the timing and what
3 these reflect, lack of foundation.

4 BY MR. HAVILAND:

5 Q So, Dr. Miller, you'll see at the
6 top, the first bullet says, Thanks for joining us
7 a day earlier. I'll skip through what he says
8 about the organization.

9 Bullet two, We do want to keep the
10 program and work with you.

11 Bullet seven reads, We went into
12 the negotiation -- let me know when you have
13 that, sir.

14 A Mm-hmm.

15 Q "We went into the negotiation of
16 the specialty distribution fee knowing that a
17 price increase was probably coming and that it
18 would be significant towards orphan drug pricing.
19 I am very familiar with orphan drug pricing, as I
20 have contract recently with Genzyme, Alexion,
21 Celgene, and a couple more biotech that are
22 coming out with orphan drugs. From past
23 experience, I figured 6 to 7K per syringe,
24 4.5 percent on 6K, \$270."

25 Did I read that correctly?

1 A Yes.

2 Q And then the last I'm going to read
3 to you is the bullet following, We were
4 surprised, as was the market, at the price
5 increase, and as such, the 4.5 percent
6 distribution fee was more significant. I guess
7 we got paid nicely for the five contracts that we
8 implemented in 2.5 months, and it should be noted
9 that we worked hard during this time, and it
10 should be noted that this strategy did let your
11 revenue go from about 15 million to 100 million.
12 As you know, this is huge.

13 Did I read that correctly?

14 A Yes.

15 Q Mr. Osborne's view of the situation
16 was that the revenue of Acthar went from
17 15 million to 100 million which is reflected in
18 Mr. Cartt's email; you'd agree?

19 MR. FORST: Objection to the
20 characterization, lack of foundation.

21 THE DEPONENT: Yeah, I'm not sure
22 what expertise I'm adding to this, but
23 you're reading correctly.

24 BY MR. HAVILAND:

25 Q Thank you. And we can do some

1 math, sir.

2 Four and a half percent on
3 100 million would be about 4.5 million; would it
4 not?

5 A Yes.

6 Q So, CuraScript S- -- SD made a
7 significant amount of money by participating with
8 Questcor in the rebranding and relaunch of
9 Acthar; did it not?

10 MR. FORST: Objection to the form
11 of the question.

12 THE DEPONENT: I don't -- I do not
13 know.

14 BY MR. HAVILAND:

15 Q Well, when you came to the company
16 in 2005, sir, did you seek to investigate whether
17 or not Express Scripts was involved with drug
18 companies in allowing them to adopt orphan drug
19 pricing models to raise the price of older
20 medications for limited patient populations?

21 MR. FORST: Objection to the form.

22 THE DEPONENT: No.

23 BY MR. HAVILAND:

24 Q Genzyme is one such older drug; is
25 it not?

1 A Genzyme is a pharmaceutical company, it's
2 not a drug.

3 Q I'm sorry. You're correct. He
4 references contracts with Genzyme, Alexion, and
5 Celgene, right?

6 A Correct.

7 Q You were aware, were you not, that
8 CuraScript ultimately got the rights to
9 distribute Genzyme drugs, right?

10 MR. FORST: Objection to the form.

11 THE DEPONENT: I do not know
12 specifics of what contracts they hold.

13 BY MR. HAVILAND:

14 Q So, you don't know if CuraScript
15 had exclusive distribution contracts with
16 Genzyme, Alexion, or Celgene, or any other
17 company?

18 A Correct.

19 Q Okay. When you became aware of the
20 significant increase in the price of Acthar, and
21 given your role as the chief medical officer,
22 with the ability to interface with CuraScript,
23 Accredo, and the CuraScript Specialty Pharmacy,
24 the PBM, and even the hub -- we didn't talk about
25 the hub.

1 Did you interface with the hub?

2 A I don't recall ever interfacing with the
3 hub.

4 Q Okay. It was part of the
5 organization, though?

6 A Correct.

7 Q Okay. Did you ever say, as the
8 chief medical officer, that, I've seen Acthar
9 from the time I was a medical student, and what
10 can we as a company do to try to lower the price
11 of this drug that appears to keep going up and up
12 and up?

13 A No.

14 Q All right. So, you'd agree with me
15 that the lever Express Scripts has to sit down
16 and negotiate, as Mr. Osborne did on behalf of
17 CuraScript, that lever to try to drive a lower
18 price was never utilized by Express Scripts,
19 right?

20 MR. FORST: Objection to the form.

21 THE DEPONENT: I don't know.

22 BY MR. HAVILAND:

23 Q You have no knowledge that it was
24 ever used as a lever with Questcor and
25 Mallinckrodt, correct?

1 A I do not know.

2 Q Right. All right. Now, let's
3 change gears a little bit. Express Scripts has
4 sought to go after drug companies that take older
5 medications, limit distribution, and then reprice
6 them?

7 A Yes.

8 MR. FORST: Just wait for a
9 question. I don't think that was a
10 question.

11 BY MR. HAVILAND:

12 Q That was a good pause, though.

13 A I'm sorry.

14 Q I appreciate the pace.

15 Specifically, sir, you got a lot of
16 credit for what happened with Daraprim, you're
17 familiar?

18 A I don't know if I got any credit. I got a
19 lot -- there was a lot of comment.

20 Q We won't talk about Mr. Shkreli's
21 comment to you, but you were in -- in the
22 audience with Mr. Henry when you asked the
23 question of Mr. Shkreli; did you not?

24 A So, I was at the Forbes conference. I
25 gave a presentation at the Forbes conference, and

1 so did Mr. Shkreli, and I asked a question of
2 Mr. Shkreli.

3 Q What specifically was your question
4 to Mr. Shkreli?

5 A I don't remember the exact question.

6 Q It had to do with his pricing for
7 Daraprim; did it not?

8 A Yeah, I know it had to do with the
9 pricing, but I don't know the specific of the
10 question.

11 Q Well, I think Mr. Henry's take on
12 it was you asked about why he raised the price so
13 much for Daraprim?

14 A I find -- I question -- as you know, as
15 you've -- I'm sure you've done your homework --
16 I've questioned the price of a lot of drugs over
17 time.

18 Q And there, you went after
19 Mr. Shkreli who was -- at the time, was the CEO
20 of Turing, right?

21 A Correct.

22 Q And then, he said back to you -- I
23 won't paraphrase how he said it, but he said to
24 you, Your company has been begging for my
25 business, or words to that effect, right?

1 A Um-hmm.

2 (Reporter clarification.)

3 THE DEPONENT: Yes.

4 BY MR. HAVILAND:

5 Q And after that, a reporter asked
6 you to fact-check his statement that Express
7 Scripts was begging for business, and
8 specifically whether or not there was email
9 exchanges about that.

10 Do you recall that?

11 A So, I was -- I was unaware of our
12 contracting attempts with Turing, so I was -- I
13 would have had to have sought out help.

14 Q You came to learn that there were
15 attempts by Express Scripts to contract with
16 Turing for the exclusive rights to Daraprim,
17 right?

18 A Correct.

19 Q And you became aware that
20 Mr. Osborne, the individual who negotiated the
21 exclusive rights to Acthar with Questcor, was
22 also negotiating with Mr. Shkreli and Turing to
23 get the exclusive rights to Daraprim, right?

24 A I became aware that, yeah, Mr. Osborne
25 was -- was the one who was negotiating with

1 Turing, correct.

2 Q At the time you asked that question
3 of Mr. Shkreli, you didn't know that fact,
4 though?

5 A Correct.

6 Q All right. And did you in fact go
7 back and try to fact-check whether Shkreli was
8 right that -- whether or not "begging" is the
9 right word -- Express Scripts was attempting to
10 get the business of Turing for Daraprim?

11 A I went back to find out what our
12 relationship was with Turing, correct.

13 Q What did you learn?

14 A I learned that we were trying to negotiate
15 to -- at some point in time, we had been
16 negotiating to try to be the distributor for
17 Turing.

18 Q And did that surprise you, sir?

19 A No.

20 Q Okay. Did you come to learn what
21 prices were being discussed with Turing by
22 Mr. Osborne and Express Scripts?

23 A No.

24 Q Would it surprise you to learn that
25 the prices being discussed were higher than

1 Shkreli and Turing actually raised the price to,
2 750?

3 MR. FORST: Objection to the form,
4 foundation.

5 THE DEPONENT: Like I said, I was
6 unaware of the -- those -- the
7 discussions. I tend -- I do not know
8 the -- I don't participate in the
9 discussions of the contracts for the --
10 for the access side of the business. It's
11 not -- it's not my --

12 BY MR. HAVILAND:

13 Q I get that, sir.

14 A -- area.

15 MR. FORST: Don, let -- let -- let
16 him finish.

17 MR. HAVILAND: I didn't know I was
18 cutting him, sir. It's fine. I didn't
19 know I was cutting him off. I looked
20 down.

21 MR. FORST: Okay.

22 BY MR. HAVILAND:

23 Q I apologize, Dr. Miller. You can
24 finish.

25 A It's just not my area. So, I have a --

1 had a big responsibility, and I worked very hard
2 on my area of the company, and as a senior member
3 of the company, would see rollups of the results
4 from other parts of the company, but the
5 specifics of their operations were left to the
6 operators of those areas.

7 (Discussion held off the record.)

8 BY MR. HAVILAND:

9 Q Dr. Miller, I'm going to show you
10 what I'm marking as Exhibit 7 to your deposition.
11 It was marked yesterday, at the deposition of
12 Brian Henry, as Exhibit 11.

13 (Exhibit 7 was marked.)

14 BY MR. HAVILAND:

15 Q And you'll see it's an email sent
16 by Mr. Henry to you and others.

17 A Thank you.

18 Q So it's Exhibit 7 to this
19 deposition, Exhibit 11 to the Henry deposition.
20 Take a moment to review it, sir. You'll see, in
21 the Monday, November 30, email thread to the
22 executive group -- I think Mr. Henry called it
23 the leadership group, he says, FYI, tonight at
24 11:01 p.m. CT, we will issue the release below
25 announcing our partnership with Imprimis

1 Pharmaceuticals to broaden access to a less
2 expensive alternative to Daraprim. We plan to do
3 embargo interviews today with Dr. Miller so that
4 media outlets can have the story out at our
5 embargo time.

6 Did I read that correctly?

7 A Yes.

8 Q And you're familiar with the press
9 release that follows, right?

10 A Yes.

11 Q And it announced that, in fact,
12 Express Scripts, the PBM, went out into the
13 market face [sic] -- place and found a partner at
14 Imprimis to produce a lower-cost equivalent to
15 Daraprim, right?

16 A No.

17 Q Well, that's what it says, sir.

18 A Well, yeah --

19 Q Let me just -- let me read it
20 first.

21 A Well, let me just --

22 Q Well, let me just read it first,
23 and then you can comment.

24 MR. FORST: Don, you asked a
25 question --

1 MR. HAVILAND: Let me just read it
2 first.

3 MR. FORST: No, no, you asked a
4 question. He was answering it.

5 MR. HAVILAND: It's withdrawn.
6 It's withdrawn.

7 MR. FORST: Okay. So you're going
8 to ask another question?

9 MR. HAVILAND: I am.

10 MR. FORST: Okay. Then withdraw
11 it. Don't get mad. There was a question
12 pending. He was trying to answer it. I
13 don't know why you're frustrated.

14 MR. HAVILAND: I'm not.

15 MR. FORST: Okay.

16 MR. HAVILAND: It's withdrawn,
17 Counsel.

18 MR. FORST: Okay.

19 MR. HAVILAND: Thank you.

20 MR. FORST: Good.

21 BY MR. HAVILAND:

22 Q Dr. Miller, Express Scripts
23 announced to the world, on November 30, 2015,
24 that, Express Script today announced it will
25 partner with Imprimis Pharmaceuticals to drive

1 access to a low-cost equivalent to Daraprim, a
2 drug for the treatment of toxoplasmosis that has
3 recently -- been recently priced out of reach for
4 people with HIV, pregnant women, and others with
5 weakened immune systems.

6 Did I read that correctly?

7 A Yes. Yes.

8 Q Then the next page, in a press
9 release announced to the world, Imprimis is
10 offering a compound oral formulation of
11 pyrimethamine -- did I say that correctly?

12 A Pyrimethamine.

13 Q Pyrimethamine -- and leucovorin, a
14 form of folic acid, for as low as \$1 per capsule
15 for people whose pharmacy benefit is managed by
16 Express Scripts. While the 62-year-old Daraprim
17 was priced \$13.50 per pill earlier this year, its
18 owner, Turing Pharmaceuticals, made the decision
19 in September to increase the price to \$750 per
20 pill.

21 Do you see that?

22 A Yes.

23 Q And then you're quoted, sir, in the
24 article several times, right?

25 A Yes.

1 Q And I assume that corporate
2 communications ran those quotes by you before
3 they used them in their press release, right?

4 A Yes.

5 Q And so they're accurate?

6 A Yes.

7 Q All right. And after this
8 announcement happened, you went on interviews --
9 they were described as embargo interviews -- on
10 behalf of the company, right?

11 A Yes.

12 Q So you became the focus of the
13 media's attention on this issue; is that fair?

14 A Correct.

15 Q And you were prepared for those
16 interviews in terms of what the company's
17 position was; were you not?

18 A Yes.

19 Q And walk me from this release back
20 in time to when Express Scripts decided to go out
21 into the marketplace and develop with Imprimis a
22 lower-cost alternative to Daraprim?

23 MR. FORST: Objection, assumes
24 facts not in evidence.

25 THE DEPONENT: So, actually, we did

1 not go into the marketplace. Imprimis
2 actually came to us with this idea. So,
3 we evaluated the idea, and because of the
4 nature of Daraprim, we thought that this
5 actually could be viable. So, we both
6 vetted this clinically, legally, and --
7 and were able to figure out how to do
8 this.

9 BY MR. HAVILAND:

10 Q And it was viable clinically, and
11 it was cheaper, right?

12 A Well, it was viably -- viable clinically
13 and by the FDA, and it was less expensive,
14 correct.

15 Q And Express Scripts then made the
16 drug available to its contracted plans through
17 their compound aspect of their formularies,
18 correct?

19 A Not exactly.

20 Q All right. How was it done?

21 A Express Scripts had -- allowed Imprimis to
22 be the provider within our network for this
23 product.

24 Q Okay. So existing contracted
25 health plans would immediately have the ability

1 to cover and pay for this alternative to
2 Daraprim?

3 A Correct.

4 Q And Express Scripts, in fact, went
5 out into the marketplace and promoted the
6 alternative to the physician community, correct?

7 A Correct.

8 Q And it did that to counteract
9 Shkreli's price increase; did it not?

10 A Correct.

11 Q And I'm going to show you an email
12 from one plan. It happens to be a client of my
13 law firm. It happens to be a plaintiff in a
14 lawsuit against Express Scripts. This is
15 Exhibit 8 to your deposition, sir.

16 MR. HAVILAND: For those on the
17 record, it's ExpressScripts5478859 through 860.

18 (Exhibit 8 was marked.)

19 BY MR. HAVILAND:

20 Q If you go to the first page, sir --
21 it's always best to read emails from the bottom
22 up -- I'll represent to you John Heenan is the
23 plan administrator of International Union of
24 Operating Engineers, Local 542. As I
25 represented, they have instituted a lawsuit

1 against Express Scripts in suburban Philadelphia
2 for Acthar. In October of 2015, Mr. Heenan
3 writes to Michael Aschi.

4 Do you know who that was?

5 A No.

6 Q Okay. He's in the sales
7 organization. He was the account rep for fund at
8 the time. "How do we block Turing's drug and
9 promote Imprimis to our member?"

10 Do you see that?

11 A Yes.

12 Q And then above that, do you know
13 who Hiten Patadia is?

14 A I do not.

15 Q I'm sorry?

16 A I do not.

17 Q I'm sorry, I just didn't hear you.

18 She writes back to Mr. Heenan, Hi,
19 John, I remember this question from a few months
20 ago, and I'm sure you've seen some headlines
21 in -- in the recent news. ESI has established
22 access for the compound made by Imprimis.

23 So, as of December 3rd and the
24 press release, everything was in place for plans
25 like Local 542 to get Acthar -- or to get

1 Daraprim for its members, this alternative, and
2 cover it, right?

3 A Correct.

4 MR. FORST: Objection to the form.

5 BY MR. HAVILAND:

6 Q And that was done in the span of a
7 couple of months, right?

8 A Yes.

9 Q Imprimis had the agent available,
10 right?

11 A Yes.

12 Q The folks in procurement and
13 contracting did what they needed to do to get
14 Express Scripts access to the medication so it
15 could be fulfilled to members that are contracted
16 through health plans, right?

17 A Yes.

18 Q And then it was ultimately covered
19 and pushed out into the marketplace by Express
20 Scripts to the physician community, right?

21 A Yes.

22 Q And this -- Patadia says, I would
23 just like to let you know that there is no
24 special enrollment that the fund has to complete.
25 Your members will have access to the cheaper

1 alternative. Physicians that have prescribed
2 Daraprim over the last 12 months will be sent a
3 proactive fact form informing them about our
4 decision.

5 So, in fact, Express Scripts went
6 back and looked at utilization and targeted those
7 physicians that had already prescribed Daraprim
8 to let them know there was a cheaper alternative,
9 right?

10 A Correct.

11 Q And why'd they do that?

12 A Because the -- they were going to be using
13 an alternative form, and it's appropriate for the
14 physicians to know that.

15 Q And it's an appropriate thing, if
16 you're looking to get -- drive lower costs, to go
17 to those physicians that are already prescribing
18 the medication to let them know there's an
19 alternative, right?

20 A Yes.

21 Q And then there's an announcement,
22 if you go to the first page -- well, before that,
23 Mr. Heenan says, Why can't it work like mandatory
24 generic? They can get the drug, but have to pay
25 the difference? Or add it to the step therapy

1 list?

2 Do you see that?

3 A Yes.

4 Q Ms. Patadia says, Great question,
5 John. Express Scripts is not blocking the brand
6 or -- and/or advising the physician to utilize
7 the compound. And then -- then she, I think,
8 puts this piece of the press release out there.

9 Do you see that?

10 A Yes.

11 Q So, in fact, there was no edits,
12 prior authorization, or -- or UM -- utilization
13 management restriction put on Daraprim, right?

14 A I can't -- I don't know what the --

15 Q Okay. That's fair. But
16 alternatively, with this new compound agent, it
17 was promoted out, and Express Scripts made --
18 took the steps necessary as a PBM so the
19 contracted plans could get access to it and pay
20 for it at the cheaper level, right?

21 A That's correct.

22 Q Now, that was Daraprim, sir.

23 And did you come to learn that
24 Imprimis had also -- came to Express Scripts and
25 said that they could do the same thing with

1 Acthar?

2 A Yes.

3 Q What do you recall about that?

4 A It's not viable.

5 Q Well, that's -- that's your
6 opinion.

7 What do you recall about what they
8 said?

9 A So, Mark Baum, the CEO of Imprimis,
10 suggested that and some other drugs that he
11 had -- he believed he could make suitable
12 alternatives.

13 Q You didn't believe him?

14 A As the chief medical officer, there's a
15 huge difference between Daraprim and Acthar that
16 makes it non-viable for Acthar.

17 Q Why is it not viable?

18 A Well, as we've already talked about,
19 Daraprim is a simple chemical, and so taking that
20 simple chemical and compounding it for
21 availability for patients is relatively easy.

22 Number two is, because we added the
23 leucovorin to it, it was within FDA guidelines
24 for us to use. Without the leucovorin, we could
25 not have used the -- even a Daraprim compound,

1 because the requirements of the FDA is that you
2 cannot use a compound with a --
3 commercially-available products available.

4 Number three is, the number of
5 patients that were on Daraprim, exceedingly
6 small, and so you can do individual compounds for
7 individual patients, and so it's not
8 manufacturing, again, meeting the good graces of
9 the FDA.

10 Q And why is that not viable in
11 Acthar?

12 A Number one is, Acthar is a protein, and so
13 protein is a really complex structure. Remember,
14 it's not just the amino acid sequence. It's even
15 the folding of the protein. And so, you cannot
16 be assured that what -- taking ACTH and putting
17 it in a compound would have the same
18 bioavailability and the same actions as the
19 manufactured product.

20 Second is, because he -- because
21 the manufactured product is on the marketplace,
22 the FDA would take a dim view of this.

23 And third, because of the volumes,
24 they would probably be making it in batches,
25 which means they're manufacturing, and you're not

1 allowed to manufacture in the compounding
2 business.

3 Q Well, let's break that down.

4 Acthar is approved for infantile
5 spasms by the FDA, correct?

6 A Acthar is, yes.

7 Q Yes. It has a limited approval for
8 acute exacerbations of multiple sclerosis?

9 A And infantile spasms, correct.

10 Q Right. Infantile spasms, and it
11 has a secondary approval for acute exacerbations
12 of MS?

13 A Correct.

14 Q A flare?

15 A Correct.

16 Q Just an incident; it's not a
17 disease-modifying therapy; it only helps to abate
18 the symptoms of the flare, right?

19 A Correct.

20 Q You would expect a very limited
21 prescription, one-and-done to abate the symptoms,
22 right?

23 A Correct.

24 Q So, it's a -- it's a very narrow
25 indication for multiple sclerosis, right?

1 A Yes.

2 Q And as you testified previously,
3 there are 17 or 18 other indications in the
4 label, but they are not FDA-approved, right?

5 A Correct.

6 Q They are simply acknowledged as
7 indicated for potential use by the physician
8 community, right?

9 A That's correct.

10 Q And that's an important
11 distinction, right? There's FDA-approved, as
12 you're pointing out with this situation with
13 Imprimis, and you have FDA approval for Acthar
14 for IS and acute exacerbations of MS, right?

15 A Correct.

16 Q All the other indications are only
17 indicated for use, right?

18 A And that's why we have utilization
19 management for those.

20 Q Okay. And that's why, you'd agree
21 with me, the FDA wouldn't take a position in
22 terms of use of a drug outside of its FDA
23 approval?

24 A I'm not --

25 Q Well, for a physician that wants to

1 write a script of Acthar for rheumatoid
2 arthritis, right, physicians can do off-label
3 prescriptions all the time, right?

4 A That's correct.

5 Q In fact, for the better part of its
6 history, Acthar was an off-label medication for
7 infantile spasms; was it not?

8 A I don't know.

9 Q Well, it wasn't approved until
10 2010, right?

11 MR. FORST: Objection to the form.

12 THE DEPONENT: I don't know the --
13 I don't know the history of the approval.

14 BY MR. HAVILAND:

15 Q You know it was approved at one
16 point in time --

17 A So, the FDA initially reviewed it in 1952,
18 but I don't know what the FDA actions subsequent
19 to that are.

20 Q Okay. Did you come to learn that
21 it was approved by the FDA at some subsequent
22 time?

23 A So, I know that the label, which I don't
24 know when it was generated, has it approved for
25 infantile spasm and for flare -- you know, for

1 episodes of -- exacerbations of MS.

2 Q And the label then just deals with
3 indications and uses for other diseases, right?

4 A Correct, which is quirky, because we don't
5 see that with many labels.

6 Q Right. And it's a -- it's a
7 quirkiness of the fact that this is such an old
8 medication, right?

9 A It was before effectiveness was a
10 requirement of the FDA.

11 Q Right. The FDA never determined
12 effectiveness of Acthar for any use outside of IS
13 and acute exacerbations of MS?

14 A That's correct.

15 Q In fact, the original label had
16 treatment for migraine headaches; did you know
17 that?

18 A No.

19 Q It had treatment for delirium
20 tremens by alcoholics; did you know that?

21 A No.

22 Q But you are aware the FDA never
23 studied effectiveness of Acthar for any of those
24 other indicated potential uses?

25 A Until 1962, the FDA didn't look at

1 effectiveness.

2 Q Right. And there's a class of
3 medications that preceded the FDA; Acthar's one
4 of them?

5 A Correct.

6 Q Daraprim is one of them; it was
7 around before the FDA, right?

8 MR. FORST: Objection to the form,
9 calls for speculation.

10 BY MR. HAVILAND:

11 Q I'm -- do you know?

12 A I don't know.

13 Q Okay. Did Express Scripts ever
14 take any sample quantities of the Imprimis
15 product that it was developing as an alternative
16 to Acthar and test it?

17 MR. FORST: Objection, assumes
18 facts not in evidence.

19 THE DEPONENT: So, I can tell you
20 that there is -- we have no capacity to
21 test it. It's irrelevant what the testing
22 is, because until the FDA would have
23 approved the protein product, it wouldn't
24 be suitable for us to use on our patients.

25 BY MR. HAVILAND:

1 Q Are you saying that -- did Imprimis
2 ever go to the FDA and get approval for Acthar?

3 A I know that the -- Imprimis talked with
4 the FDA. To this date, there is no Imprimis
5 FDA-approved product for use in substitute to
6 Acthar.

7 Q Do you recall Mr. Baum asking
8 Express Scripts specifically to support it in its
9 effort to get FDA approval?

10 A I do not recall specifically Mark asking
11 us to support his effort.

12 Q You don't? You don't recall him
13 asking for financial support to help bring the
14 product to market and get FDA approval?

15 A I know that there were communications with
16 our company about them when they wanted to spin
17 out the product. Those were in later years, but
18 as you know, that's not what we do. We do not
19 create our own products.

20 Q Well, you went out and contracted
21 with Imprimis to bring their product to market
22 with Daraprim, right?

23 A Because it was a simple product that was
24 safe to -- for them to create and did not run
25 afoul of the FDA.

1 Q You agree that the patient
2 population for the approved uses of Acthar is
3 narrower than the indicated uses that it's
4 marketed for?

5 A That is correct.

6 Q You never explored with Imprimis
7 developing an alternative to Acthar strictly to
8 treat IS and acute exacerbations of MS; is that
9 fair?

10 A That would require a clinical trial of
11 their product, and that was not -- we -- we did
12 not deem that feasible.

13 Q I'm going to show you what I'm
14 marking as Exhibit 9 to your deposition.

15 (Exhibit 9 was marked.)

16 BY MR. HAVILAND:

17 Q Before I get to that exhibit,
18 you're -- you're familiar with Mark Baum, the CEO
19 of Imprimis, right?

20 A Yes.

21 Q You had interactions with him?

22 A Yes.

23 Q I noticed you're not on all the
24 emails exchanges; you're on some.

25 You've had email exchanges where

1 you were copied with Mr. Baum at Imprimis?

2 A I -- I -- I know I had emails with -- that
3 I was on with Mark, correct.

4 Q All right. Well, here's one such
5 email where you're in the thread. So, let me
6 show you Exhibit 9.

7 A Great.

8 Q For the record, Exhibit 9 to the
9 Miller deposition is ExpressScripts0837581
10 through 7583. As with all emails, sir, it's
11 easier to go from the back to front, Mr. Baum's
12 email to you and Wendy Barnes of
13 June 5, 2017.

14 Do you see that?

15 A Yes, sir.

16 Q And who's Wendy Barnes?

17 A So Wendy was in our network contracting
18 group.

19 Q So, she would be someone who would
20 be able to speak to the issue of whether or not a
21 drug could be put out in a network?

22 MR. FORST: Objection to the form.

23 BY MR. HAVILAND:

24 Q Help me with network contracting.
25 I'm not clear on what that --

1 A So, she contracts with pharmaceutical
2 companies and pharmacies for products.

3 Q I see. Okay. So, she -- she has a
4 hybrid role between pharma contracting and
5 pharmacy contracting?

6 A I don't know specifically what her
7 bailiwick is --

8 Q That's fair.

9 A -- but she's in the supply chain group.

10 Q Do you remember this email, sir?

11 A I -- seeing the email, yes, I remember it.

12 Q All right. Well, let's take a
13 moment and review it. It's written directly to
14 you --

15 A Yep.

16 Q -- because Mr. Baum says, Steve.
17 That's you, right?

18 A Yes.

19 Q "I hope all is well with -- I hope
20 all is well for you and ESI. We are working with
21 your colleagues at Accredo on a small project."

22 Let me stop there. I have the
23 documents, but you're familiar with the fact
24 that, in addition to Daraprim, Express Scripts
25 contracted with Imprimis to bring an alternative

1 leuprolide product, the brand agent is Lupron,
2 that treats prostate cancer, right?

3 A I'm -- I'm familiar with the contract. I
4 did not know that.

5 Q You're familiar with the contract.
6 You didn't know what?

7 A I didn't -- I'm not familiar with the
8 leuprolide discussions.

9 Q You are or are not?

10 A I'm not familiar with --

11 Q Oh, I'm sorry. I didn't know that
12 you were or were not?

13 A I am not.

14 Q Okay. We'll get to that.

15 A Okay.

16 Q Well, let me do that first, because
17 he's keying off of that.

18 A Yep.

19 Q And I want to show you that first.
20 I'm going to show you what I've marked as
21 Exhibit 10 to your deposition.

22 (Exhibit 10 was marked.)

23 BY MR. HAVILAND:

24 Q It's hard getting around that.
25 There (handing). Exhibit 10 to the Miller

1 deposition is ExpressScripts4932466 through 2490.
2 As I said, sir, you're not copied on all the
3 exchanges, and this is one of them. This
4 precedes the email that we're looking at, though,
5 by a few months.

6 So, you see in the email thread
7 from Bill Martin -- who was the head of Accredo
8 at the time, May of 2017?

9 MR. FORST: You're free to
10 familiarize yourself.

11 BY MR. HAVILAND:

12 Q Yeah, absolutely. I just want to
13 know you're familiar with Mr. Martin, who was the
14 president of Accredo -- vice president, right?

15 A Vice president, correct.

16 Q Okay. I'm not going to ask you
17 about the contract. I'm going to ask you about
18 the email threads, just to orient you about this
19 subject matter. The email goes on for quite a
20 number of pages, so if you can go to the Bates
21 number that ends 2470. Let me know when you have
22 that.

23 A Got it.

24 Q Yep. And you can read as much as
25 you need coming up. As I said, I don't believe

1 you're copied on this thread. The first email
2 from Ben Slen.

3 Who's he?

4 A Ben is a -- one of our employees in
5 Accredo Health.

6 Q Okay. He's writing back to
7 Mark Baum -- we've talked about -- and a
8 Gary Seelhorst at Imprimis.

9 Do you know who he was?

10 A No.

11 Q Okay. And they say -- Mr. Slen
12 says, We have a pressing need for a compound
13 leuprolide for our Freedom Fertility Pharmacy.

14 Do you see that?

15 A Yes.

16 Q And then coming forward, there's
17 some discussions about talking back and forth.
18 On 469, the facing page, Mr. Baum writes back,
19 Ben, we appreciate the opportunity to work with
20 you on this solution and hopefully others. I
21 have asked our team to make this a priority, and
22 I think you will be pleased not only with our
23 quality products and pricing, but, more
24 importantly, our ability to provide outstanding
25 service. Have a great weekend.

1 Do you see that?

2 A Yes.

3 Q And then coming forward, there's
4 a -- a lengthier email at 468, and now we're into
5 April of 2017, from Mr. Baum.

6 Do you see that "strictly
7 confidential"?

8 A Yes.

9 Q "I trust we are moving forward on
10 the leuprolide."

11 Do you see that?

12 A Yes.

13 Q And on the facing page, it makes
14 reference to the attachment of the contract -- a
15 redlined contract, and as I said, I'm not going
16 to go over that, but if you go to page 241,
17 you'll see there's a Pharmacy Transfer Agreement
18 created for Freedom Fertility Pharmacy and
19 Imprimis.

20 Do you see that?

21 A Yes.

22 Q As I said, I'm not concerned about
23 the contract history. This email from April 6,
24 2017 -- and I'm back on page 2468, sir -- it keys
25 off this discussion about the leuprolide

1 alternative, and in the second paragraph, it
2 says, I spoke to our team today.

3 Do you see that?

4 A Yes.

5 Q "I spoke to our team today, and it
6 crossed my mind that our corticotropin
7 formulation alternative to HP Acthar Gel may
8 be -- might be much more valuable to you than
9 leuprolide. Previously, we decided to not make
10 our corticotropin available to any of our PBM
11 relationships and to instead develop it as an
12 FDA-approved product. That said, if you had an
13 interest and would get behind it, we would
14 consider making it initially available to
15 Accredo.

16 Do you see that?

17 A Yes.

18 Q So at this point in time, Mr. Baum
19 is suggesting to Express Scripts that they have a
20 product they're looking to advance for FDA
21 approval, but they, in fact, have a product?

22 MR. FORST: Objection to the form.

23 THE DEPONENT: He believes he has a
24 product.

25 BY MR. HAVILAND:

1 Q Okay. Well, he says to the folks
2 in this email "our product," and he talks about
3 developing it as an FDA-approved product.

4 Then there's a lengthy discussion
5 here, and I want to go to the part where it says,
6 Imprimis ACTH product description.

7 Are you there?

8 A Yes.

9 Q He goes on to talk about, The
10 porcine product, which is HP Acthar Gel. He
11 describes it's amino chain 39.

12 A Um-hmm.

13 Q And then he says, Imprimis has
14 developed a stable 39 chain amino acid peptide
15 that is chemically synthesized rather than from
16 porcine pig source, but identical in biological
17 activity.

18 Do you see that?

19 A I see that.

20 Q So, he's suggesting that they're
21 not trying to replicate the pig product; they're
22 looking to do a chemically-synthesized product
23 that would be similar, right?

24 A Correct, which would require FDA approval.

25 Q Okay. But he is suggesting that

1 that's what they're doing, right, sir?

2 A Um-hmm.

3 (Reporter clarification.)

4 THE DEPONENT: Yes.

5 BY MR. HAVILAND:

6 Q And did you know in this time
7 frame, in 2017, that they had such a product and
8 they were developing it for FDA approval?

9 MR. FORST: Objection to the form.

10 THE DEPONENT: I knew that they had
11 a product, and we had told them it has to
12 be FDA-approved.

13 BY MR. HAVILAND:

14 Q And that was it?

15 A Mark, you know, was very excited about his
16 product. We had tremendous interest in it, if
17 they could get it FDA-approved.

18 Q Okay. Express Scripts was not
19 interested in an alternative to Acthar with
20 Imprimis if it was not FDA-approved; is that
21 fair?

22 A We -- because of the complexity of the
23 products, this is different than a chemical.
24 This is a protein, and proteins are not just
25 amino acids, but there's protein folding. And so

1 knowing the biologic activity of a protein, it is
2 really crucial to making sure that we're giving
3 bioequivalent products to our patients. So we
4 were interested, but cautious.

5 Q Sir, you said, We are giving
6 bioequivalent products to our patients.

7 Express Scripts doesn't administer
8 products to patients?

9 A We help facilitate products getting to
10 patients.

11 Q Physicians administer products to
12 patients?

13 A That's correct.

14 Q Express Scripts is a PBM?

15 A Correct.

16 Q It manages relationships, and it
17 manages utilization, but it doesn't administer
18 products to patients, right?

19 A That's incorrect. We have -- through our
20 subsidiaries, we have nursing staff that goes out
21 to homes that administers products.

22 Q Not Acthar, sir?

23 A I don't know about Acthar.

24 Q Is it possible that Express Scripts
25 has a branch that's administering Acthar to

1 patients?

2 A I would have to -- we do home
3 administration of medications, and under certain
4 circumstances, patients aren't able to even give
5 themselves self-injectables, and so we assist
6 that.

7 Q Let me show you what I've marked as
8 Exhibit 11 to your deposition, and then I want to
9 come back to 9, okay?

10 A Yeah.

11 Q Exhibit 11 is further in the email
12 thread than what we just looked at as Exhibit 10.

13 (Exhibit 11 was marked.)

14 BY MR. HAVILAND:

15 Q And you'll see it's a different
16 series of emails. As I said, these discussions
17 tend to go around different facets of the
18 company. If you go the email from Ben Slen,
19 April 28, 2017, on page 828.

20 Do you have that, sir?

21 A Yes, sir.

22 Q Mr. Slen writes to Mark Baum and
23 team, and there's a number of Imprimis people,
24 Looking forward to meeting you all in person in
25 San Diego next week.

1 Did you attend that meeting?

2 A No.

3 Q All right. "In terms of agenda,"
4 he says, "I was hoping we could spend some time
5 on, one, the leuprolide contract and next steps;
6 two, CuraScript Specialty Distribution supply
7 agreement/Avastin; three, additional
8 opportunities; and, four, facility tour."

9 Do you see that?

10 A Yes.

11 Q Did Express Scripts contract for a
12 supply of Avastin through Imprimis?

13 A I have no --

14 MR. FORST: Objection to the form.

15 THE DEPONENT: I have no idea.

16 BY MR. HAVILAND:

17 Q All right. The leuprolide contract
18 and distribution through Freedom Fertility, do
19 you know if that leuprolide alternative was
20 FDA-approved?

21 A I have -- I'm totally unaware of all
22 those.

23 Q Well, Lupron's FDA-approved; is it
24 not?

25 A Lupron's FDA-approved.

1 Q So, wouldn't the same concerns
2 apply in terms of Express Scripts wanting to have
3 an FDA-approved product as an alternative to an
4 FDA-approved product?

5 A I can't --

6 MR. FORST: Let me just object,
7 calls for speculation, vague and
8 ambiguous.

9 THE DEPONENT: Yeah, I can't
10 comment. I know nothing about this, so --

11 BY MR. HAVILAND:

12 Q Well, you do know that Lupron
13 treats prostate cancer, right?

14 A Um-hmm.

15 Q Yes?

16 A Yes.

17 Q It's a brand, right?

18 A Yes.

19 Q It's covered by Express Scripts as
20 a specialty, right?

21 A Yes.

22 Q It's high-priced?

23 A Yes.

24 Q Imprimis, from these documents,
25 spoke directly with Express Scripts folks about

1 doing a -- a leuprolide alternative, right?

2 MR. FORST: Objection to the form.

3 THE DEPONENT: It appears so.

4 BY MR. HAVILAND:

5 Q And you don't know whether or not
6 that leuprolide alternative was, in fact,
7 FDA-approved, right?

8 A This never --

9 MR. FORST: Objection, asked and
10 answered.

11 THE DEPONENT: This has never come
12 before me. I do not know anything about
13 this.

14 BY MR. HAVILAND:

15 Q Okay. But the concern you raised
16 about FDA-approved medications being sponsored,
17 covered, or otherwise addressed by Express
18 Scripts with Imprimis would apply equally to
19 Lupron as it does to Acthar; does it not?

20 A And we should --

21 MR. FORST: Objection to the form.

22 THE DEPONENT: We have an
23 obligation to make sure our patients get
24 high-quality products, and -- and so, when
25 I'm aware of these things, the -- the --

1 especially protein products that are
2 complicated, we need to be, you know,
3 assured that they are the quality that we
4 can stand behind, and most of -- you know,
5 that would usually require FDA approval.

6 BY MR. HAVILAND:

7 Q So, let's go back to Exhibit 11,
8 and then I want to go to Exhibit 9.

9 After the discussion about that
10 meeting, Mr. Baum writes back on the face page,
11 which is 11827.

12 A Which -- are we still with 11?

13 Q Yeah. Exhibit 11, Mark Baum's
14 email to Ben Slen and others --

15 A Got it.

16 Q -- on May 3rd.

17 A Got it.

18 Q Got that?

19 A Yes.

20 Q "Ben, just a note to thank you and
21 your team for making the trip to San Diego." So
22 apparently the meeting happened. "We felt it was
23 a very productive meeting, and we will be working
24 on the agreement modifications, as well as the
25 action items we discussed to move forward with

1 the leuprolide acetate business. In thinking
2 about our approach with a product like
3 corticotropin" -- that's Acthar, right?

4 A Yes.

5 Q -- "it occurred that if there is an
6 interest on your side, it might be best to
7 consider a program in terms of focusing on 100
8 percent access for your patients where the
9 branded alternative is not covered."

10 Do you see that?

11 A Yes.

12 Q "Rather than moving market share
13 from a reference drug to the compound
14 alternative, perhaps a supplementary co-pay waive
15 program to promote access to these single-source
16 branded products where insurance carriers would
17 otherwise deny coverage, or, when appropriate,
18 the physicians decides to write the alternative."

19 Do you see that?

20 A Yes.

21 Q So, he has suggested that instead
22 of having this alternative to Acthar compete with
23 or try to take away prescriptions for IS and MS,
24 you focus on the other areas where Acthar is
25 being prescribed at a high price, right?

1 A That appears to be what he's implying,
2 correct.

3 Q And Mr. Slen writes back that,
4 Stephanie and I had a good discussion with
5 Mark Baum.

6 Do you know who Stephanie was?

7 A Yes.

8 Q Who's that?

9 A Stephanie Uder is one of our employees. I
10 don't know which department she was working in at
11 the time.

12 Q Okay. And then Mr. Slen writes
13 that, The meeting took place yesterday. We
14 continue to move forward on the leuprolide
15 arrangement. They are reworking a contract for
16 us. And that's leuprolide.

17 Skipping down, Mr. Slen writes, We
18 also discussed several other potential
19 opportunities -- I'm not going to get these names
20 right -- Xiaflex, Thiola, Avastin, Makena, and
21 Acthar.

22 Do you see those?

23 A Yes.

24 Q Thiola is a Shkreli drug, right?

25 A I don't know. I don't know who makes

1 Thiola.

2 Q Okay. Do you know the company
3 Retrophin?

4 A Yes.

5 Q Do you recall that they --
6 there was a time when Mr. Shkreli was the CEO of
7 Retrophin; do you recall that?

8 A Oh, yeah.

9 Q All right. In fact, Mr. Shkreli's
10 company sued over the Synacthen acquisition.

11 Were you aware of that?

12 A I'm unfamiliar with all that.

13 Q Did Express Scripts ever explore a
14 low-cost alternative to Thiola with Imprimis?

15 A I do not know.

16 Q Okay. This email by Mr. Slen --
17 I'm just going to skip down. You can read the
18 whole thing, sir, the one -- I want to read where
19 he says, The one that is the biggest opportunity,
20 but also has the most potential issues, is their
21 corticotropin product to compete with Acthar.
22 The opportunity that seems like it could be
23 easiest after leuprolide is Thiola.

24 Do you see that?

25 A Yes.

1 Q And you don't know, as you sit
2 here, whether or not Express Scripts pursued an
3 alternative product to Thiola to compete with
4 that high-priced product?

5 A I do not.

6 Q All right. Let's go back. So, now
7 we have context that was outside of your
8 discussions. I want to go back to Exhibit 9 --

9 A Sure.

10 Q -- which follows these April and
11 May emails.

12 You're in the thread that is
13 June 26; do you see that?

14 A Yep.

15 Q So, let's go back to where I was
16 reading.

17 A June 26th.

18 Q Yeah, you're on the June 5 email,
19 and that's where I was reading. Thank you. So
20 it's Exhibit 9, ExpressScripts Bates ending in
21 7582.

22 A Yes.

23 Q Mr. Baum's email; do you have that?

24 A Yes, sir.

25 Q Okay. And I had veered away when I

1 read the part where Mr. Baum says, We are working
2 with you colleagues at Accredo on a small
3 project.

4 Now you have a sense of what the
5 project was, right?

6 MR. FORST: Objection to the form
7 and characterization, lack of foundation.

8 MR. HAVILAND: He calls it a
9 project.

10 THE DEPONENT: Okay.

11 BY MR. HAVILAND:

12 Q "But I wanted to reach out on a
13 different subject. We are spinning out a company
14 called Eton Pharmaceuticals. Eton will develop
15 and commercialize, among other drug assets, a
16 viable competitor to Acthar. Here are a few
17 points of information."

18 Do you see that?

19 A Yes, sir.

20 Q And then he describes their
21 formulation.

22 Do you see that?

23 A Yes.

24 Q He says, We have completed a
25 six-month stability study for based on -- study

1 for based on the USP monograph.

2 And such a study is necessary to
3 begin the process of FDA approval; is it not?

4 A Correct.

5 Q He then says, In addition to the
6 technical achievement -- that he describes
7 above -- he says, of stabilizing a potent
8 non-gelatin preservative-free synthetic 39 chain
9 corticotropin formulation -- that's a
10 tongue-twister -- we have engaged a former deputy
11 director at the FDA's Office of Generic Drugs to
12 help design a clinical development program, which
13 should allow us to get to market fairly soon.

14 Do you see that?

15 A Yes.

16 Q Then he goes on to say that, We
17 believe our formulation will compete with Acthar
18 and offer competition in a market in need of
19 competition, right?

20 A Yes.

21 Q Now, is it your testimony that,
22 after getting this email, you did not pursue
23 further opportunities with Imprimis to bring a
24 lower-cost alternative to market, because you
25 were awaiting FDA approval?

1 MR. FORST: Objection to the form.

2 THE DEPONENT: We, you know, found
3 this interesting, but Mark understood our
4 need for FDA approval, and our belief is
5 this is going to require a clinical trial,
6 and that is not going to be quickly done.

7 BY MR. HAVILAND:

8 Q So, in answer to my question, there
9 was no effort to further pursue a lower-cost
10 Acthar alternative through Imprimis, because
11 Express Scripts was requiring an FDA-approved
12 product?

13 A We don't require -- we -- we are
14 interested in products that can be competitors,
15 and in this particular case, it was my belief
16 that we were going to need to have an
17 FDA-approved product.

18 Q And do you have that same belief as
19 to other high-priced specialty drugs in terms of
20 their alternative medications to treat diseases?

21 MR. FORST: Objection to the form.

22 THE DEPONENT: Yeah. So, you know,
23 it's a case-by-case basis. It's what --
24 you know, it's the areas that I get
25 involved with, and -- well, you know,

1 almost -- so, we actually, as the FDA, are
2 very cautious when it comes to
3 compounding. The compounding industry
4 has, as you know, had its own problems,
5 but we actually have parts of our business
6 where compounding's important, like
7 infertility.

8 And so -- but, you know, patients'
9 safety is really important. There's a lot
10 of high-priced drugs. There's a lot of
11 drugs I wish there were alternatives to,
12 but we also have to make sure they're safe
13 products.

14 BY MR. HAVILAND:

15 Q Is there no alternative to Acthar
16 today?

17 A For infantile spasm? Not that I'm aware
18 of in the United States.

19 Q How about for acute exacerbations
20 of MS?

21 A There are drugs that work I believe better
22 than Acthar.

23 Q And what has Express Scripts done
24 to utilize that fact, that there are cheaper
25 better alternatives to acute exacerbations, to

1 drive a lower cost of Acthar for MS?

2 A So, we put utilization management in front
3 of those requests, but that's -- you know, but we
4 do not have the leverage of a competitive
5 product.

6 Q You have the leverage of
7 competitive alternative agents to treat the
8 disease --

9 A For MS, correct.

10 Q Yes. And, sir, you've been a -- a
11 big advocate of indication-specific pricing; have
12 you not?

13 A I would love to make indication-based
14 pricing work, yes.

15 Q And did you ever talk to
16 Mallinckrodt about that?

17 A So, what we've done for indication-based
18 pricing is I've explored it with some of the
19 leading, sort of, healthcare economists. We've
20 never been able to actually make it work. We've
21 talked to pharmaceutical companies about it.
22 They're not interested. So, the best example I
23 can give you is, in cancer, we -- we've
24 explored -- there's a --

25 Q Oops.

1 A So, in cancer, we've taken drugs where
2 they've tried it in different cancers. We've
3 seen the difference in survival. So, there's one
4 drug used for pancreatic cancer. It extends your
5 survival by 12 days. So, they have an FDA label
6 for pancreatic cancer.

7 That same drug, used in lung
8 cancer, extends your life by five months. So,
9 we've tried to say, Can we pay differentially
10 based on the survivals? The pharmaceutical
11 companies are not interested in pursuing that.

12 Q Because they like the one high
13 price?

14 A Because it will hurt their Medicaid best
15 price.

16 Q That's one factor, but they don't
17 want to lower the price across the disease
18 states?

19 A Well, the pharmaceutical companies never
20 want to lower their prices, so they don't
21 voluntarily lower prices.

22 Q So, this idea that you came up with
23 was to look at drugs, especially high-priced
24 drugs, and look at the value proposition -- my
25 words -- across the spectrum of indications for

1 which it can be used, right?

2 A Yes.

3 Q And realizing that there are some
4 uses that are higher value than others, have what
5 you said was differential pricing?

6 A Correct.

7 Q And differential pricing is a
8 competitive force in the marketplace that will
9 drive down --

10 A Could be.

11 Q -- prices?

12 Could be. But you've never
13 succeeded?

14 A No.

15 Q The pharmaceutical industry's not
16 interested?

17 A Correct.

18 MR. HAVILAND: Let's take a break.

19 THE VIDEOGRAPHER: Okay. Going --
20 we're going off the record at 11:26 a.m.

21 (Break taken.)

22 THE VIDEOGRAPHER: We are back on
23 the record at 11:49 a.m.

24 BY MR. HAVILAND:

25 Q Dr. Miller, are you familiar with

1 the Drug Trend Report that's put out by
2 Express Scripts annually?

3 A Yes.

4 Q And -- and tell the jury what --
5 what that is.

6 A So we, on an annual basis, put out a
7 report that characterizes how drugs are being
8 used in the United States and what the trend is
9 for all the different classes.

10 Q And it's -- it's a high-level look
11 at drugs that are covered on Express Scripts
12 formularies; is that fair?

13 A It actually includes even things not
14 covered on our formulary, but it's a high-level
15 look at the -- how drugs are being utilized in
16 the United States.

17 Q And it also tracks cost trends?

18 A Yes.

19 Q Okay. And so you're -- you're
20 able, through that, to look at trends in costs of
21 specialty medications, among others, right?

22 A Correct.

23 Q All right. Do you have any role in
24 the drug report -- did you, in the past?

25 A Yeah. In given years, I have been one of

1 the reviewers for the Drug Trend Report.

2 Q Okay. Did there ever come a time
3 that -- that Express Scripts focused upon what
4 I'll call really high-cost drugs in terms of ones
5 that were multiple percentages higher, like
6 hundreds of percents higher year over year?

7 A So, I forgot what they -- so we've --
8 we've focused on, you know, high-cost drugs and
9 also high-spending patients, so called super
10 spenders.

11 (Reporter clarification.)

12 BY MR. HAVILAND:

13 Q And is that element in the Drug
14 Trend Report, to -- to your knowledge?

15 A It has been included in -- it's not a
16 feature that's included year over year, but it's
17 been included in some, yes.

18 Q So, we looked at a document
19 yesterday with Mr. Henry. You're not copied on
20 it, but I want to show it to you. It's -- it's
21 in that period of time when you were looking at
22 Daraprim and the alternative in -- in the fall of
23 2015. I'm going to show it to your counsel.

24 Unfortunately, I only have one
25 copy. I should have got a copy of it from there.

1 I've got a copy for your counsel of -- of the
2 other stuff I want to use, but this is really
3 just to ask you a follow-up to the question I
4 just did.

5 MR. HAVILAND: It is marked as
6 Henry Exhibit 12, ExpressScripts5769673 to
7 9674. There's an email from an analyst
8 that I'm just going to generally orient
9 the witness to, but I'm really concerned
10 with Glen Stettin's approach as a member
11 of the leadership, if you want to take a
12 look at that.

13 Oh, I'm sorry, I did get a copy of
14 it. I thought that was one, but there was
15 another copy of it. My apologies. Oh,
16 they didn't do the two sides.

17 MR. FORST: Wait a second -- yeah.

18 BY MR. HAVILAND:

19 Q Well, let me just read it. I'm not
20 concerned -- apparently, some lower-level analyst
21 within the company had written to some folks in
22 his organization. I think the highest was
23 Mr. Stettin. And the -- the Re line is, The old
24 drug Daraprim cost increase of 5,500.

25 You can read it yourself, sir, but

1 the email says -- his name is Jason Glanville.
2 Just for those who don't have a copy, it says,
3 Some of you may know me. Some of you may not. I
4 am part of the pharmacy system BAT -- and I think
5 that's just a -- a data group within the company,
6 according to Mr. Henry -- and I have dearly --
7 dearly-held belief in holistic affordable
8 healthcare. Over the weekend, a dismal industry
9 event occurred, where the cost of a 62-year-old
10 medication called Daraprim increased 5,500
11 percent, from 13.50 to 750 per pill.

12 And he says what it's used for.
13 And then he says, What makes me absolutely
14 disgusted is that Daraprim is a legacy medication
15 that has already increased over 1,300 percent
16 from \$1 to \$13 in the last decade.

17 Then he asks, Is there an
18 opportunity to leverage our Sovaldi approach with
19 pricing and formulary to negotiate a cheaper
20 Daraprim source or alternative for our patients?

21 That then goes up to Mr. Stettin --

22 MR. HAVILAND: And this is the
23 part, Counsel, you have.

24 BY MR. HAVILAND:

25 Q Mr. Stettin says, Daraprim is just

1 one of several older medications for which a
2 manufacturer has cornered the market and raised
3 the price to seemingly egregious levels. Are
4 each of you satisfied we are doing what we need
5 to do to protect our clients and patients from
6 gouging while capturing value for Express
7 Scripts? Is it worth pulling together the list
8 of worst offenders?

9 And then that goes up to
10 Mr. Kautzner, who talks about various things, and
11 then finally, Mr. Stettin writes to Mr. Kautzner,
12 and he ccs Mr. Henry, which is how he came in,
13 Can I trouble you for a list of top offenders?

14 And when I was asking about the
15 Drug Trend Report, do you recall that the
16 company, in relation to the Daraprim situation --
17 Shkreli raising the price and coming up with a
18 cheaper alternative -- put together a list of top
19 offenders, here described as folks who cornered
20 the market and raised the prices of drugs to
21 seemingly egregious levels?

22 A I -- I --

23 MR. FORST: Just objection to the
24 form.

25 THE DEPONENT: I don't remember.

1 BY MR. HAVILAND:

2 Q Okay. Express Scripts has had the
3 capability to do such an analysis with the data
4 that it has; you'd agree?

5 MR. FORST: Objection to the form.

6 THE DEPONENT: Most likely, yes.

7 BY MR. HAVILAND:

8 Q It tracks drug trends and prices?

9 A Yeah.

10 Q And if it wanted to look at, you
11 know, drugs with a certain level of price
12 increase over time, it could do that?

13 A Yes.

14 Q Do you recall in any of the
15 discussions you had with the folks who were
16 dealing with the Daraprim solution -- and,
17 obviously, it went up to Mr. Wentworth. He gave
18 some commentary. You did a lot of talks about
19 it.

20 Do you recall anyone saying, We
21 should use this opportunity to look at not just
22 what happened Shkreli's Daraprim, but other drugs
23 like it in terms of its older profile, but now
24 being, they say, cornered the market and the
25 price increased?

1 A Yeah, we're constantly looking for
2 opportunities to knock down the prices of drugs,
3 and so -- and as you've pointed out, we've tried
4 to be very innovative in those approaches. So,
5 this is what we do. We try to -- we're always
6 looking for opportunities.

7 Q Well, I get that, sir. I -- what
8 I'm concerned and asking about is, it seems like
9 Mr. Stettin -- and why don't you tell the jury
10 what his role was as a direct report to
11 Mr. Wentworth.

12 A So, he's over innovation.

13 Q Okay.

14 A In our innovation laboratory.

15 Q So, he would have the visuals of
16 what's --

17 A His --

18 Q -- in the portfolio of drugs and
19 then what's potentially out there?

20 A His group creates the Drug Trend Report.

21 Q Oh, so he does have the data?

22 A Um-hmm.

23 Q Yeah. And if you wanted to do
24 this -- what he calls the list of top offenders,
25 it could be done, right?

1 A Correct.

2 Q And with the -- with the thing that
3 happened with Shkreli's drug going up 5,500
4 percent, do you recall that that was a -- a
5 wake-up call for -- for the PBM to be more
6 proactive about going after these older
7 medications for which manufacturers are raising
8 the prices?

9 A You know, I think that it was just yet
10 another egregious episode. Egregious episodes in
11 the pharmaceutical industry occur all the time,
12 and so, obviously, from -- you know, from this
13 memo, it looks like they're reexamining those
14 things, correct.

15 Q All right. You don't recall a
16 particular hit list of top offenders being
17 circulated; is that fair?

18 A You know, it could have been done. I
19 could have even seen it. I just don't recall it.

20 Q All right. I'm going to show you
21 what was previously marked as Exhibit --

22 MR. HAVILAND: Did I mark that one?
23 I don't know that I did?

24 MR. FORST: No, you didn't.

25 MR. HAVILAND: So, it was marked as

1 Henry -- thank you -- Henry Exhibit 12. It just
2 so happens to be Exhibit 12 to your deposition.

3 (Exhibit 12 was marked.)

4 (Discussion held off the record.)

5 MR. HAMANN: Don, I think it's
6 Exhibit 13.

7 (Discussion held off the record.)

8 MR. HAVILAND: No, it was Henry 12,
9 and now it's Miller 12, just so we have a
10 clear record. So just put it in the pile
11 there.

12 BY MR. HAVILAND:

13 Q Well, we're at that point where
14 we're going in two different directions now. So,
15 I'm going to show you, sir, what I've marked as
16 Henry Exhibit 5. That will be Exhibit 13 to your
17 deposition.

18 (Exhibit 13 was marked.)

19 (Discussion held off the record.)

20 MR. HAVILAND: Here's your copy
21 actually. I'm only going to ask about the
22 facing emails. For the record, folks,
23 Henry Exhibit 5 is now Miller Exhibit 13,
24 ExpressScripts5566025 through 6033.

25 BY MR. HAVILAND:

1 Q It's a series of emails. There's a
2 lot of heavy redaction here, with some in-house
3 counsel commentary. It's an article in the
4 thread for Lynnette Lopez, Business Insider, and
5 then I'm most concerned about the exchange with
6 Brian Henry.

7 And, sir, if you have that exhibit
8 in front of you, I want to orient you to where
9 you come in on this. The date is April 12, 2018.
10 Mr. Henry says, I'll forward it to Steve.

11 Do you see that at the very top?

12 A Which -- the first page?

13 Q It's the thick --

14 A Oh, yeah, right.

15 Q The very -- thread email at the top
16 from Brian Henry to Jen Luddy says, I'll forward
17 it to Steve.

18 Do you see that?

19 A Yes.

20 Q Mr. Henry said yesterday that he
21 intended to forward this to you,
22 Dr. Steve Miller, okay?

23 And -- and the thread -- I'm not,
24 as I said, concerned about the articles that
25 much. There -- we spent some time yesterday

1 going over with Mr. Henry articles in the press
2 about Acthar, and there -- there was a number.

3 Here, in the middle of the thread,
4 Jen Luddy writes on April 12 to Brian Henry and
5 others, do you see, Updated story?

6 A Um-hmm.

7 (Reporter clarification.)

8 THE DEPONENT: Yes.

9 BY MR. HAVILAND:

10 Q I'll read for the record, Also, I
11 talked with Clark Bitney. He's all good. Just
12 needs talking-points, which I will send. He said
13 at one point there was talk about us doing to
14 Acthar what we did to Daraprim. All caps, How
15 awesome would it be if we made that happen? It
16 would so put Lynette in her place. I think
17 they're referring to the reporter from Business
18 Insider.

19 And then Mr. Henry writes back,
20 Tell him they need to make that happen, whatever
21 it takes.

22 Do you see that?

23 A Yes.

24 Q Then Jen Luddy says, He -- I think
25 they're referring to Mr. Bitney.

1 Do you know who Bitney is,
2 Mr. Bitney?

3 A No.

4 Q All right, He said he heard a
5 rumor. I think it's a conversation with Steve to
6 see if that is possible.

7 And then Mr. Henry says, I'll
8 forward it to Steve. Why not ask?

9 Do you see that?

10 A Yes.

11 Q So, this is after the emails we
12 looked at from 2015, where the issue of the
13 Daraprim solution, and then into 2017. Here we
14 are in 2018, the issues come up again in the
15 context of some media coverage.

16 And do you recall the
17 communications folks coming to you and asking
18 specifically, Is it possible to do a
19 Daraprim-like solution, and would the company do
20 whatever it takes to make it happen?

21 A Don't remember.

22 Q You don't remember?

23 Did the company do whatever it
24 takes to bring -- bring about a Daraprim-like
25 solution for Acthar?

1 MR. FORST: Objection to the form
2 of the question.

3 THE DEPONENT: I believe we
4 evaluated it and did not find a viable
5 alternative.

6 BY MR. HAVILAND:

7 Q In your mind, you -- the company
8 did whatever it takes?

9 A Correct.

10 Q All right. Shortly after this
11 email thread, do you recall that 60 Minutes did a
12 piece involving Mallinckrodt, Express Scripts,
13 and Acthar?

14 A Yes.

15 Q There was a series of transmittals
16 from Mr. Henry that I won't ask you about, but
17 you were carbon-copied as part of the leadership
18 on those, and I want to talk to you about what
19 happened after.

20 So I'm going to mark as
21 Exhibit 14 to your deposition this email from
22 Brian Henry.

23 (Exhibit 14 was marked.)

24 MR. HAVILAND: For the record,
25 Exhibit 14 to the Miller deposition is

1 ExpressScripts4990395 through 0398.

2 BY MR. HAVILAND:

3 Q If you follow the thread, sir,
4 you'll see there's a -- embedded in the email is
5 a part of the CBS News release on the Rockford
6 story that they did, Why Does Your Prescription
7 Cost So Much? There are some significant
8 redactions here, but Mr. Henry forwarded on May
9 the 4th, which was before the program aired, an
10 email to you and others about this -- the piece.

11 Do you recall receiving notice that
12 60 Minutes was going to do a piece?

13 A Yes.

14 Q Did you sit in any meetings with
15 executives prior to the piece happening?

16 A Not that I recall.

17 Q Okay. Did you watch the program?

18 A I watched it afterwards. So, they sent a
19 link out, and I watched it on the link.

20 Q So, it was after the Sunday night
21 airing of it?

22 A Correct.

23 Q Okay. And where did you watch it?

24 A I can't recall. I don't know.

25 Q Were you alone? Were you with

1 others?

2 A I suspect I was in my office, but I don't
3 know.

4 Q And what was your reaction to it?

5 A You know, like -- you know, Mallinckrodt's
6 behavior was egregious, it's horrible, and, you
7 know, I believe that we were mischaracterized in
8 the story.

9 Q Okay. What happened after that?
10 Did you raise your concerns about the story with
11 anyone at Express Scripts?

12 A Obviously, there was a lot of concern
13 going around the entire executive team, and, you
14 know, we had discussions about the -- you know,
15 about the story.

16 Q Tell me about those that you were
17 privy to.

18 A You know, I think most of them were how do
19 we -- how do we get our side of the story out
20 there to demonstrate that we've done what we were
21 supposed to do to control the price of the drug,
22 and to make clear to the marketplace that
23 pharmaceutical companies are responsible for the
24 price of their drugs. They set the price,
25 and -- and so making sure that the facts of the

1 case are actually known.

2 Q Were you aware that the producer
3 had reached out previously and asked
4 Express Scripts to do an on-air interview?

5 A I was not.

6 Q Did anyone ever say to you that
7 there was an opportunity to do an on-air
8 interview?

9 A I don't recall.

10 Q Would you have been willing to do
11 one?

12 A If my company advised -- you know, if
13 they -- if comms and the rest -- and legal and
14 everyone who we usually have, you know, opine on
15 these things thought it was appropriate, I'd be
16 happy to represent the company.

17 Q Nobody ever came to you and said
18 that they wanted you to do that, though?

19 A Not that I recall.

20 Q Okay. After the story aired, there
21 were some further email threads about some of the
22 issues that were raised, and in this particular
23 thread, it's actually keying off a comment that
24 Jennifer Luddy equated to Mr. Wentworth, where he
25 asked, is it possible to do a Daraprim-like

1 solution.

2 You're familiar with that request?

3 A Yes.

4 Q Okay. And then that got pushed out
5 to you. I -- I think this version is just
6 redacted. Counsel, actually then produced some
7 of the underlying emails, so we saw that request
8 by Mr. Wentworth, and this may be where it came
9 to your attention.

10 But you'll see, Mr. Wentworth, in
11 this thread, the night of May 6th, says to
12 Mr. Henry, "The one thing in the story that I
13 wonder if we can't hit more directly is that they
14 give us credit for the generic alternative to
15 Martin Shkreli's drug --

16 And it misspells his name, and
17 that's not surprising. It's one of those names
18 you can't quite -- quite grab. He says
19 "Sktellis." I think it's "Shkreli."

20 -- "and say we could have done the
21 same thing given that there is a generic
22 available in Canada. I don't believe that's so,
23 and if there's a simple and clear why of saying
24 why we and the FDA have not allowed that to
25 happen, that could be good."

1 Do you know what he's referring to
2 with the "generic available in Canada"?

3 A I believe it's --

4 Q Synacthen?

5 A -- Synacthen that's available in Canada.

6 Q We'll come back to that. I really
7 want to just focus on the part about the
8 alternative to Shkreli's drug. As I said,
9 there's another email, and I can show it to you.
10 Why don't I do that now, just so you can see it.
11 I don't have to remark it, but -- like I said, it
12 gets difficult to track these emails that run
13 different in directions within the company.

14 (Discussion held off the record.)

15 BY MR. HAVILAND:

16 Q You're not on the email, which is
17 one of the reasons I didn't have it in your
18 packet, but you were then looped in by
19 Brian Henry, so I'll show you this email.

20 It's the unredacted thread from
21 Brian Henry, and feel free to look at as much as
22 you like. What I'm getting to is the --
23 Jennifer Luddy's report at -- it says 1:00 a.m.
24 Mr. Henry said, with all the time differences,
25 it's probably not 1:00 a.m., but she wrote to

1 Adam Kautzner, Andy Behm, Clark Bitney, and
2 Brian Henry.

3 I'll read it into the record, and
4 then I'll show it to you, Hi, if you haven't
5 heard, the 60 Minutes piece ran this evening.
6 Synopsis below, and our updated response is
7 attached. Thanks again for your help with the
8 initial draft a few months ago. The lawyer for
9 Rockford, Illinois suggested in the piece that we
10 could have/should have found a way to do \$1
11 alternative to Acthar, similar to what we did
12 with Daraprim. Tim is asking us if that is
13 possible. Clark, I recall you saying we explored
14 this, but is it possible? Tim, also is wondering
15 if we are able to get Synacthen? The story says
16 Mallinckrodt owns it in the US, but that it's
17 available in Canada for \$33. Appreciate the
18 guidance here.

19 If you could just take a moment to
20 review that. I don't believe you ever got that
21 email, sir. Do you recall if you did?

22 A Don't recall.

23 Q Okay. You did get the thread from
24 Brian Henry forwarding what Mr. Wentworth said?

25 A Right.

1 Q And you understood that
2 Mr. Wentworth was asking two questions; one, was
3 there something Express Scripts could do to try
4 to get Synacthen, right?

5 A Um-hmm.

6 (Reporter clarification.)

7 THE DEPONENT: Yes.

8 BY MR. HAVILAND:

9 Q Secondly, is there something it
10 can -- the company can do to create a
11 Daraprim-like solution, right?

12 A Correct.

13 Q All right. Let's focus on that
14 latter question. Exhibit 14, which is in front
15 of you, is an email to you. Take a look at that
16 one.

17 A Okay.

18 Q After what I read from
19 Mr. Wentworth, Mr. Henry writes, I think that
20 it's complicated, but I do wonder if we can do
21 something akin to Daraprim here.

22 Do you see that?

23 A Yes.

24 Q And then I have your response --
25 and I'm doing this only because the response

1 doesn't have that thread in it for some reason.

2 I'm marking as Exhibit 15 to your deposition,

3 sir, what I believe is your email response.

4 (Exhibit 15 was marked.)

5 MR. HAVILAND: I actually have a

6 lot of copies of this. I do not know why,

7 but here you are (handing).

8 BY MR. HAVILAND:

9 Q Exhibit 15, Dr. Miller, is

10 ExpressScripts0834559. You were using

11 BlackBerry. I'm -- I'm proud of you. I still

12 do.

13 A Actually not. It's the -- they have the

14 operating system, but it's not a BlackBerry.

15 Q Is that right?

16 A Correct.

17 Q I still have mine.

18 A Apparently, BlackBerry is very secure.

19 Q Well, I still have mine.

20 But I -- I believe this is the

21 response. Sometimes when emails get produced, it

22 just gets cut off. But do you recognize this as

23 the email you sent back to Mr. Henry?

24 A I believe so.

25 Q Okay. And why don't you read for

1 the record what you wrote.

2 A "We worked with a compounder to develop a
3 drug with the active ingredient for Daraprim plus
4 leucovorin. It was different than Daraprim, so
5 we did not violate FDA regulations. I don't
6 believe we have the same opportunity with
7 Acthar."

8 Q Okay. And that was your response
9 to Mr. Henry. Did you ever give that response or
10 something like that to Mr. Wentworth?

11 A Yeah, Tim and I discussed this, and, you
12 know, me, him -- this was just a shorthand way of
13 saying we couldn't do it, but I had a longer
14 discussion with Tim about the variety of reasons
15 why we did not think it was safe to do for
16 Acthar.

17 Q So walk me through that. I assume
18 it took place after this email thread on
19 the morning of the 27th.

20 A I -- I believe so.

21 Q Well, there were a lot of people up
22 late, it seems. It happened that week?

23 A I believe it was -- yeah, I mean, there
24 was a lot of discussions amongst senior
25 executives in response to the -- the 60 Minutes

1 piece, and we, like any prudent company,
2 re-reviewed all of our opportunities to make a
3 difference here, and also our response, and the
4 alternative to Acthar is still not available in
5 the marketplace today, even all these years
6 later, and it was not -- not available then.

7 Q Let me show you that same thread
8 with Andy Behm's -- Behm -- it's Behm, right?

9 A Behm.

10 Q His input. I only have my pink
11 highlight. I don't think we had enough copies
12 yesterday, so let me show it to your Counsel. So
13 again, it's the same series of emails.

14 "I think it's complicated,"
15 Mr. Henry says; your response; and this is
16 Mr. Behm's response. It might have been
17 3:30 a.m. We're getting pretty late in the --
18 early or late in the morning. It depends on your
19 perspective, "We never discussed a lower-cost
20 version of Acthar Gel with Imprimis," and then he
21 goes on to talk about some searches.

22 I'll actually put a sticker on that
23 for Exhibit 16, thank you, so we can keep a clean
24 record here.

25 (Exhibit 16 was marked.)

1 BY MR. HAVILAND:

2 Q Miller Exhibit 16 is Express

3 Scripts Bates number 4856396 through 6400.

4 Do you see Andy Behm's response

5 there --

6 A Yes.

7 Q -- Dr. Miller?

8 A Yes.

9 Q Now, he says, We never discussed a
10 lower-cost version of Acthar Gel with Imprimis.

11 You, in fact, did?

12 A I don't know who he's referring to as
13 "we."

14 Q Okay.

15 A I don't know if this is just him and his
16 group --

17 Q Sure.

18 A -- or -- and so -- but as you can see from
19 other emails, we were having discussions with
20 Imprimis about Acthar Gel.

21 Q Well, he then goes on to say he did
22 some Internet searches, and he found an article
23 from Mr. Baum saying that they were working on a
24 synthetically-produced product alternative.

25 Do you see that?

1 A Correct.

2 Q And then he talks about some June
3 2017 press releases, including the spinoff of
4 Eton that we saw in the earlier email, right?

5 A Correct.

6 Q Did you talk to Mr. Behm about what
7 you knew about that spinoff in the email that you
8 had in June of 2017?

9 A I don't remember any conversation like
10 that.

11 Q Okay. He doesn't seem to have
12 familiarity with the discussions that you were
13 having with Mr. Baum?

14 A Yeah, which doesn't surprise me.

15 Q Because he's in the P&T group?

16 A He's in the OCEP group, and this is a
17 network pharmacy product issue, so it's with the
18 supply chain.

19 Q Well, he would have optics into
20 whether or not OCEP would consider an
21 alternative, and then would that ultimately go to
22 a P&T Committee for review?

23 MR. FORST: Objection to the form.

24 THE DEPONENT: This is -- you know,
25 so what happens in the trade group is much

1 different than what he does, and so --

2 (Reporter clarification.)

3 THE DEPONENT: -- in the trade
4 group is much different than what he does,
5 and so, I'm not sure if anyone included
6 him in the conversations.

7 BY MR. HAVILAND:

8 Q Well, he was looped into this
9 thread, and my question is more focused on what
10 input he was providing.

11 Would any alternative product that
12 Express Scripts would sponsor to its contracted
13 health plans, would that have to go through OCEP
14 for review?

15 MR. FORST: Objection to the form,
16 assumes facts not in evidence.

17 THE DEPONENT: Yeah, I mean, if
18 a -- if any product is going to get on our
19 formulary, it has to go through OCEP.

20 BY MR. HAVILAND:

21 Q I think you said "yeah" real quick,
22 so the answer is --

23 A Yes, if any product is going to get on our
24 formulary, it has to go through OCEP.

25 Q Okay. So, if there is this

1 consideration of whether or not an alternative
2 product's going to be considered, and you had
3 reported previously you worked with the
4 compounder, Mr. Behm would have input in terms of
5 whether or not -- whether and to what extent OCEP
6 and a P&T Committee would have to look at that,
7 fair?

8 MR. FORST: Objection,
9 mischaracterizes the document and prior
10 testimony, calls for speculation.

11 BY MR. HAVILAND:

12 Q You can answer.

13 A There -- you know, Andy is involved in a
14 narrow area of the company, and he gets pulled in
15 when appropriate, and so, you know, I don't
16 believe he was pulled in, because it wasn't
17 appropriate.

18 Q Well, after this email, you had an
19 email with Mr. Behm on the 8th. Let me show you
20 that.

21 A Okay.

22 (Exhibit 17 was marked.)

23 BY MR. HAVILAND:

24 Q Exhibit 17 to your deposition, sir,
25 is ExpressScripts Bates number 0982536 to 537.

1 Let's work from the bottom up. Starting at the
2 bottom of the page, Mark Baum of Imprimis wrote
3 on Monday, May 7, after 60 Minutes, to
4 Wendy Barnes and cc'd two of his folks, I assume;
5 do you see that?

6 And you described Wendy Barnes
7 previously, right?

8 A Um-hmm.

9 Q Yes?

10 A Yes.

11 Q "Wendy, I hope this email finds you
12 well. We are still growing nicely. We just
13 completed our fourth full year of operations.
14 Not bad for an all-cash business. I write this
15 morning we received -- I write because this
16 morning we received a couple of inquiries from
17 clinical consultants at ESI for our corticotropin
18 injection alternative to Acthar Gel."

19 Do you know what that's referring
20 to in terms of who the clinical consultants were?

21 A No idea.

22 Q Would they be -- they'd be under
23 your group, though?

24 A No.

25 Q Where would they be?

1 A Sales and account management have lots of
2 pharmacists that work for them as clinical
3 consultants to clients.

4 Q Okay.

5 A They don't report up to me.

6 Q So you don't know who within ESI
7 reached out to Imprimis?

8 A Correct.

9 Q Okay. He says that he got
10 inquiries about the, Possibility of once again
11 collaborating with you to bring down ever-rising
12 drug costs. This is the same formulation we had
13 discussed a couple of years ago and that we
14 mentioned again last year as an investment
15 opportunity in what has now become Eton
16 Pharmaceuticals.

17 And I didn't ask you about that.
18 Previously I -- I said, were you aware that
19 Imprimis was looking for a -- an investment,
20 looking for money from Express Scripts to help
21 bring about this spinoff company and -- and what
22 it was about, Eton Pharmaceuticals.

23 Do you recall that?

24 A Yes.

25 Q And -- and Express Scripts never

1 agreed to that investment, right?

2 A It was not interested in investing.

3 Q Okay. He then says, While we've
4 been working with your team on several
5 offerings -- and we've seen that, obviously
6 Daraprim, we saw leuprolide -- to date, adoption
7 has been insignificant. We created these
8 formulations with the best of intentions, to
9 ensure patient access to important and sometimes
10 life-saving therapies. Our objective in this
11 regard has been perfectly aligned with that of
12 ESI. While we've remained -- while we have been
13 and remain committed to caring for our patient
14 population, it has been a challenge for us to
15 gain broader acceptance without support from
16 PBMs. If there is an interest to leverage the
17 work we have done together to date on the
18 corticotropin formulation and others, we would
19 appreciate some level of commitment to drive the
20 adoption of our portfolio, all the while
21 realizing huge savings to you and the clients you
22 serve.

23 And then he goes on to talk about
24 the Acthar Gel alternative that we spoke about,
25 and then some others.

1 Do you see that?

2 A Yes.

3 Q He says, This product alone would
4 save tens of millions of dollars.

5 Do you see that?

6 A Yes.

7 Q That was sent to Wendy, and then
8 Wendy sends it to -- she sends a response back,
9 and then ultimately it gets to you, I believe,
10 from Andy Behm; do you agree?

11 A Yes.

12 Q And this is Tuesday, May 8th, at
13 about 7:00 at night, right?

14 A Yes.

15 Q Andy Behm says -- do you need to
16 take that?

17 A I'd love to, if possible.

18 (Discussion held off the record.)

19 THE VIDEOGRAPHER: We are going off
20 the record at 12:21 p.m.

21 (Break taken.)

22 THE VIDEOGRAPHER: We are back on
23 the record at 12:23 p.m.

24 BY MR. HAVILAND:

25 Q All right. Dr. Miller, we were

1 looking at the email thread after 60 Minutes that
2 began with Mr. Baum reading -- reaching out to
3 Wendy Barnes at Express Scripts. It went up
4 through Wendy to Andy Behm and others. She
5 wrote -- cc'ing -- or writing back to Mr. Baum,
6 but cc'ing Mr. Behm, Mark, great to hear from
7 you. I've added Adam Kautzner and Andy Behm to
8 my response, so they can address a joint
9 opportunity.

10 I asked you why Mr. Behm would be
11 involved, because it seemed to be Wendy [sic]
12 thought that their input would be important?

13 A Yep, she thought so.

14 Q Okay. And then she's transitioned
15 over to ValoremRx.

16 Mr. Behm then says, Steve, Need
17 your help and guidance on this. See below. It
18 looks like Mark Behm is interested in talking
19 again, though I get the sense he is looking for a
20 financial. Right?

21 A Correct.

22 Q When you sat with Mr. Wentworth,
23 okay, and you talked about his two questions, and
24 the one that asked about doing a Daraprim-like
25 solution, did you raise with him that Imprimis

1 was looking for some sort of financial support to
2 help develop an alternative product to Acthar?

3 MR. FORST: Objection to the form.

4 THE DEPONENT: Yeah, I don't
5 remember specifically talking about the
6 financials. I know that, you know, just
7 as Mark identified in his email, no PBM
8 had adopted their product, because their
9 product's not viable, and so we continue
10 to not believe they have a viable product.

11 BY MR. HAVILAND:

12 Q Well, and we've talked about that,
13 and I understand your position and Express
14 Scripts' --

15 A It's just not mine. It's everyone's
16 who's -- Mark has reached out to probably lots of
17 people at this point in time, because that's what
18 he does, and no one's adopting his solution, that
19 I'm aware of.

20 Q Because it had not been
21 FDA-approved at that point, right?

22 A I can't tell you why others have not
23 adopted it.

24 Q Right.

25 A I can just say that he, you know -- and

1 you'd have to obviously talk to Mark about it if
2 he's had any success in the marketplace, but I'm
3 unaware of any major payer adopting their
4 product.

5 Q Well, how could a payer contracting
6 with Express Scripts adopt a product if they
7 don't know about it from Express Scripts?

8 A Because Mark probably went to United, CVS,
9 Aetna --

10 Q Do you know that, sir? I don't
11 want you speculate.

12 MR. FORST: Can you let him finish?

13 Just --

14 MR. HAVILAND: No, he said
15 "probably."

16 MR. FORST: It doesn't -- it
17 doesn't matter --

18 MR. HAVILAND: It does matter.

19 MR. FORST: -- if he's speculating.
20 He can finish the thing --

21 BY MR. HAVILAND:

22 Q Go ahead.

23 MR. FORST: -- and then you can
24 follow up.

25 BY MR. HAVILAND:

1 Q You can speculate.

2 MR. FORST: All right.

3 THE DEPONENT: But we are unaware
4 of any payer that is using an alternative
5 to Acthar, and there are a lot of
6 alternative payers in the country that
7 don't use Express Scripts.

8 BY MR. HAVILAND:

9 Q You don't have any personal
10 knowledge of whether or not Imprimis reached out
11 to CVS Caremark?

12 A I have no personal knowledge.

13 Q You have no personal knowledge of
14 whether Imprimis reached out to OptumRx?

15 A Correct.

16 Q You have no personal knowledge
17 whether Imprimis reached out to any other PBM?

18 A That's correct.

19 Q Express Scripts' position was it
20 wasn't going to adopt an alternative to Acthar
21 from Imprimis or Eton because it was not
22 FDA-approved?

23 MR. FORST: Objection to the form.

24 THE DEPONENT: We -- we were not
25 adopting the alternative that they've come

1 forward with to us.

2 BY MR. HAVILAND:

3 Q Because it was not FDA-approved?

4 A Because we did not believe it's of the
5 clinical quality that's required for our patients
6 to get it.

7 Q But you never tested it?

8 A We don't test drugs.

9 Q You never asked any independent
10 entity that tests drugs to test it?

11 A That is correct.

12 Q Okay. And so you don't know
13 whether it was viable or not?

14 MR. FORST: Objection to the form.

15 THE DEPONENT: The -- if you
16 understand how drugs are brought to
17 market, you would know that a clinical
18 trial would be required for this, and
19 there was no clinical trial data ever
20 presented to us.

21 BY MR. HAVILAND:

22 Q What clinical trial was done for
23 the alternative to Daraprim?

24 A So Daraprim, the -- the drug, because it's
25 a chemical product, it's identical to what was in

1 the marketplace, plus the leucovorin.

2 Q That wasn't my question, sir. Let
3 me ask it again.

4 What clinical trial was done for
5 the alternative to Daraprim that Express Scripts
6 partnered with Imprimis to bring to market?

7 A Because of the nature of the product,
8 there -- it did not require a clinical trial, but
9 I am unaware of any clinical trial.

10 Q So, there was no clinical trial for
11 the Daraprim alternative that Express Scripts
12 brought to market with Imprimis, correct?

13 A Correct.

14 Q All right. And it's your opinion
15 that there would need to be a clinical trial
16 before any alternative to Acthar could be brought
17 to market --

18 A Correct, because --

19 Q -- with Imprimis?

20 A -- that's a biologic.

21 Q Okay. Because it's a biologic,
22 right?

23 A Correct.

24 Q But Mr. Baum has said theirs --
25 theirs is a Synacthen product, sir, right?

1 A So, it's a -- it's still 39 amino acids.
2 So, a biologic is not just because a biologic is
3 obtained from living cells. A biologic is a
4 protein product. And so he has a protein drug.
5 Protein drugs are susceptible to not just their
6 chain integrity, but their folding and other
7 properties, and so this has been part of the
8 difficulty.

9 We would love for there to be an
10 alternative to Acthar on the marketplace. We've
11 been innovative in many other drugs on trying to
12 lower price. And so, I would be thrilled to have
13 a lower-price alternative to Acthar. It doesn't
14 exist at this point in time, and it didn't exist
15 then.

16 Q Well, it exists in the world; does
17 it not, sir?

18 A I don't know that.

19 Q Synacthen?

20 A I don't know how the FDA views Synacthen
21 in comparison to Acthar Gel.

22 Q You just brought it back to the
23 United States, sir. I said it exists in the
24 world.

25 You know that Synacthen is approved

1 in Europe and Canada for the treatment of
2 diseases for which Acthar treats, correct?

3 A That is correct.

4 Q It was also \$33 in Canada?

5 A That is correct.

6 Q And you knew that the owner of
7 Synacthen was the same company that owned Acthar?

8 A I've been made aware of it through this
9 case.

10 Q When did Express Scripts ever sit
11 down and leverage the fact that that product was
12 available in Canada through the same manufacturer
13 to try to get Mallinckrodt to do the right thing
14 to lower the price of Acthar?

15 A So, I am unaware of any discussions about
16 Synacthen and its impact on the price of Acthar.

17 Q But you agree with me that that is
18 an ability of the Express Scripts PBM to say to
19 the manufacturer, You have a competitive agent in
20 your portfolio, and we, the PBM, can use that
21 fact as leverage to try to get you to do the
22 right thing --

23 A That's not --

24 MR. FORST: Just let him finish.

25 Let him finish.

1 BY MR. HAVILAND:

2 Q -- but your testimony, sir, is that
3 it never happened, right?

4 MR. FORST: Objection to the form.

5 THE DEPONENT: It's not a relevant
6 fact, because it's not available in the
7 United States.

8 BY MR. HAVILAND:

9 Q You're not aware that pharmacies
10 have brought Synacthen to the United States for
11 treatment of patients?

12 A So, individuals can go to Canada to get
13 drugs, they can re-import, but I'm unaware that
14 pharmacies can re-import from Canada.

15 Q You're not aware that a -- a
16 pharmacy named Caligor was bringing Synacthen
17 into the United States?

18 A I'm not aware of that.

19 Q Never heard of that?

20 A Never heard of that.

21 Q Okay. And you're suggesting that
22 the largest PBM at the time, Express Scripts,
23 would have no way of being able to bring a
24 Canadian-approved product to treat patients in
25 the United States?

1 A So, there's laws that govern the
2 importation by both individuals and by
3 pharmacies. The laws I'm aware of, it would not
4 be legal for us to bring the product into the
5 marketplace.

6 Q What did Express Scripts do at any
7 time with Mallinckrodt to inspire it to try to
8 bring Synacthen to market in the United States?

9 MR. FORST: Objection, calls for
10 speculation, vague and ambiguous --

11 THE DEPONENT: As you know, I --

12 MR. FORST: Let me just get out --
13 our the host of objections that are
14 warranted.

15 Vague and ambiguous, "inspire,"
16 calls for speculation, asked and answered.

17 You can go ahead.

18 THE DEPONENT: So, I'm not involved
19 in negotiations with Mallinckrodt. I'm
20 unaware of what they did.

21 BY MR. HAVILAND:

22 Q Well, sir, the CEO asked a pointed
23 question of the leadership, including yourself,
24 after 60 Minutes about Synacthen.

25 Did you respond to him?

1 A As you can see from my responses, they are
2 mostly around the Acthar alternative.

3 Q Well, that was the Daraprim
4 solution with Imprimis.

5 Did you answer the CEO's question
6 about if anything would be done with Synacthen?

7 A I did not.

8 Q Do you know if anybody did?

9 A I do not know.

10 MR. HAVILAND: Okay. Why don't we
11 take a lunch break.

12 (Discussion held off the record.)

13 THE VIDEOGRAPHER: We are going off
14 the record at 12:33 p.m.

15 (Break taken.)

16 THE VIDEOGRAPHER: We are back on
17 the record at 1:22 p.m.

18 BY MR. HAVILAND:

19 Q Dr. Miller, is there available
20 today a competitive drug or agent that can treat
21 disease states that Acthar currently treats?

22 MR. FORST: Objection to the form.

23 THE DEPONENT: So, there's no
24 direct competitor that I know of for
25 infantile spasms. There's better drugs

1 for many of the other indications, and I
2 believe even better drugs than for
3 exacerbations of MS.

4 BY MR. HAVILAND:

5 Q So, let's talk about Sabril,
6 vigabatrin.

7 A Unfamiliar with it.

8 Q You don't know what that is?

9 A No.

10 Q You don't know what it treats?

11 A No, sir.

12 Q Were you aware that CuraScript has
13 the exclusive distribution arrangement for
14 Sabril?

15 A Don't know what it is; haven't heard of
16 it.

17 Q Okay. Are you aware that a company
18 called Assertio is developing a treatment for
19 infantile spasms?

20 A Nope.

21 Q That was never brought to your
22 attention?

23 A I'm unaware of it.

24 Q So, I'm seeing Andy Behm on a lot
25 of these emails, and what I'm trying to

1 understand, sir, is just within the organization,
2 he plainly had a broader role than just the OCEP
3 group, because he's looped in on discussions
4 about competitive agents in the marketplace.

5 A No, the --

6 Q I want to -- I just -- I want to
7 understand what you understand his role to be in
8 relation to yours because I may just ask him the
9 questions on what he's copied, but you're the
10 medical director, and I want to know your
11 interface with him.

12 A Yeah, so --

13 MR. FORST: Again, I don't think
14 the -- there's a question.

15 BY MR. HAVILAND:

16 Q Yeah, it was. I want to know your
17 interface with Mr. Behm.

18 MR. FORST: That's kind of a
19 statement, "I want to know." Are you
20 asking him what his interface is --

21 MR. HAVILAND: I'll ask it the way
22 you like it, Counsel.

23 MR. FORST: Okay. Okay.

24 BY MR. HAVILAND:

25 Q Dr. Miller, can you please tell me

1 your interface with Mr. Behm.

2 A Yeah. So, Andy's a direct report of mine.

3 He is over OCEP. OCEP actually has a function

4 where they file the pipeline and patent. So,

5 they actually meet with pharmaceutical companies

6 when products are in development to hear about

7 what's in their pipeline.

8 Q Perfect. So, he reports to you,

9 and you reported to Mr. Wentworth when he was the

10 CEO, correct?

11 A Correct.

12 Q Alrighty. And in that direct

13 report function, you never came to learn that

14 Mr. Behm was evaluating a competitive agent to

15 Acthar being developed by Assertio, Cosyntropin?

16 A I think to say he was evaluating it is

17 probably a mischaracterization. He is learning

18 about the product from the pharmaceutical

19 manufacturer.

20 Q Well, he's talking about price, so

21 let's take a look at Exhibit 18, which is

22 ExpressScripts0992149 through 2152.

23 (Exhibit 18 was marked.)

24 BY MR. HAVILAND:

25 Q I'll give you that copy first, sir.

1 I don't believe you're copied on it, but --

2 MR. HAVILAND: And, Counsel, the
3 copy I'm going to give you has a friendly
4 highlight. I don't know what the highlight is,
5 but that's yours.

6 MR. FORST: This is 18?

7 MR. HAVILAND: 18.

8 BY MR. HAVILAND:

9 Q So, if you can go to the beginning,
10 sir, you'll see it begins with an email from a
11 Lance Helsel at Accredo to Mary Dorholt?

12 A Um-hmm.

13 Q Either of those folks in your
14 practice group?

15 A I do not believe so.

16 Q Okay. Ms. Dorholt was a PharmD in
17 the clinical practice group; do you see that?

18 A Yes.

19 Q That's in Accredo?

20 A I believe so.

21 Q All right. And the -- the Re line
22 is, Assertio Cosyntropin depot.

23 Do you see that?

24 A Yes.

25 Q And TRC, they're the resource

1 centers within Accredo?

2 A The therapeutic resource centers within
3 Accredo.

4 Q And there's one for specialty,
5 where Acthar is, right -- I'm sorry, there's one
6 for rare disease, which is where Acthar is
7 treated?

8 A I believe that's true.

9 Q So, if you come forward in the
10 thread, at the bottom of page 151,
11 Aimee Tharaldson says, We are tracking this.

12 Do you see that? I'm on the bottom
13 of page 151.

14 A 151. Yep.

15 Q And she's talking about, Not
16 previously on the report, I will add it to the
17 supplement list.

18 Do you see that?

19 A Yes.

20 Q Are you aware of any branch of
21 Express Scripts tracking products in development
22 that compete with approved products in any way?

23 MR. FORST: Objection to the form.

24 THE DEPONENT: So, the pipeline
25 patent group tracks lots of products, both

1 specialty and non-specialty, puts out a
2 report. I'm even copied on the report,
3 but I usually don't even read the report.

4 BY MR. HAVILAND:

5 Q So, Mary Dorholt, after that -- and
6 we're in February 2019, just a couple of years
7 ago -- I'm still on page 151 -- she writes back,
8 Need your read on TRC assignment. Is this truly
9 rare or endocrine? Will it be parallel to
10 Acthar?

11 Do you see that?

12 A Yes.

13 Q So, it looks like this product in
14 development has gotten to the point where Accredo
15 is looking to assign it to a particular TRC,
16 right?

17 MR. FORST: Objection to the form,
18 lack of foundation, calls for speculation,
19 mischaracterizes the document.

20 THE DEPONENT: The -- it looks like
21 someone at the TRCs is asking that
22 question, yes.

23 BY MR. HAVILAND:

24 Q And -- and looking at this email so
25 far, it's not refreshing your recollection that

1 anyone came to you, the chief medical officer,
2 and asked your view about Assertio's product; is
3 that fair?

4 A I've never seen these and -- and never
5 heard about the product.

6 Q Well, if you go to page 150, which
7 is the facing page, to where we are, at the
8 bottom, it says, Stefanie and Tim, from
9 Aimee Tharaldson, Do you have any cost estimates
10 for Cosyntropin Depot? We're bringing this drug
11 to a specialty advisory board in a couple of
12 weeks.

13 Do you know what that's referring
14 to?

15 A Yes, we have a -- as it describes, we have
16 a specialty advisory board that looks at products
17 in the pipeline.

18 Q Okay. And -- and is that in your
19 group?

20 A No.

21 Q Where does that sit?

22 A I believe it's within Accredo.

23 Q All right. "I'm hesitant to
24 estimate that it will be similar to Acthar," and
25 she gives an estimate of 580,000 per year. Then

1 there's a screenshot from an investor
2 presentation, 2018.

3 Do you see that?

4 A Yes.

5 Q And then the screenshot says,
6 Corcitropin Synthetic ACTH Depot, a Real
7 Alternative to Acthar Gel.

8 Do you see that?

9 A Yes.

10 Q And then coming forward, there's a
11 press release, September 4, 2019, announcing
12 submission; do you see that? I'm at the bottom
13 of page 149.

14 A It says, Press release announcement, yes.

15 Q Yep. And then above that, somebody
16 named Craig Reno is providing some cost
17 information, \$127.90 per .25 milligram dose.

18 Do you see that?

19 A Um-hmm.

20 (Reporter clarification.)

21 THE DEPONENT: Yes.

22 BY MR. HAVILAND:

23 Q And he's also done some math here
24 that there were a total of 176 claims.

25 You'd agree that the product would

1 have to be on the market and being covered by
2 Express Scripts and paid for by plans for Express
3 Scripts to have claim data, right?

4 MR. FORST: Objection to the form
5 of the question.

6 THE DEPONENT: I don't know what
7 he -- what the -- what -- the study he was
8 running.

9 BY MR. HAVILAND:

10 Q Well, just as a general matter, a
11 PBM would not have claims data if it wasn't an
12 approved product being dispensed and paid for,
13 right?

14 MR. FORST: Objection to the form.

15 THE DEPONENT: It looks like some
16 product was evaluated and had claims,
17 correct.

18 BY MR. HAVILAND:

19 Q Okay. He says 176 claims totaling
20 \$23,900 in AWP; do you see that?

21 A Yes.

22 Q AWP is the average wholesale
23 price --

24 A Correct.

25 Q -- for the drug?

1 A Correct.

2 Q And that's the price that payers
3 pay, right?

4 A Generally.

5 Q Well, wholesalers, pharmacies, pay
6 the WAC price, right?

7 A The -- the average wholesale price is --
8 it's a bit more complicated than that, but yes.

9 Q I asked about the AWP.
10 My second question was, you're
11 aware that wholesalers and pharmacies pay a
12 WAC-based price?

13 A Right.

14 Q Do you know the relationship
15 between the AWP and the WAC?

16 A I am -- it's not my baliwick. I can't
17 tell you the exact --

18 Q You don't get into that level of
19 detail of pharmaceutical pricing?

20 A No.

21 Q All right. And then the final of
22 the thread is asking whether the manufacturer's
23 studying for infantile spasms, and
24 Aimee Tharaldson says, It's in development. The
25 trial is expected in 2021.

1 Do you see that? Top of the email.

2 A "It's also in development," yes. Yes, I
3 see that.

4 Q And so, reviewing this email from
5 the Accredo folks, it doesn't -- nothing strikes
6 as familiar to you in terms of anyone bringing
7 the issue of Cosyntropin Depot's availability to
8 your desk; is that fair?

9 A Correct.

10 MR. FORST: Objection,
11 mischaracterizes the document.

12 BY MR. HAVILAND:

13 Q All right. Are you aware there's a
14 product called Cortrophin Gel currently in the
15 marketplace?

16 A Again, unaware.

17 Q You're not aware?

18 A Correct.

19 Q It's after the lunch break. I want
20 to make sure I keep my voice up and yours.

21 Well, Mr. Osborne announced in
22 2021 -- and I reviewed with Mr. Martin and
23 Mr. Shirey -- that Express Scripts had won the
24 exclusive, he says, gig for corticotropin gel
25 produced by ANI Pharmaceuticals.

1 You were unaware of that?

2 A I'm unaware of that.

3 Q Are you aware that CuraScript
4 Specialty Distribution currently has a contract
5 with ANI Pharmaceuticals for the exclusive
6 distribution of corticotropin gel?

7 A Unaware of it.

8 MR. FORST: Objection, assumes
9 facts not in evidence.

10 MR. HAVILAND: Well, we'll see
11 about that.

12 BY MR. HAVILAND:

13 Q Let's mark Exhibit 19.

14 (Exhibit 19 was marked.)

15 MR. FORST: We will.

16 MR. HAVILAND: We will. We have a
17 contract.

18 MR. FORST: You know, that's part
19 of, you know, laying the foundation before
20 you ask the question.

21 MR. HAVILAND: Well, you ask first,
22 and then you lay the foundation. This is
23 Exhibit 19.

24 MR. FORST: Well, I don't know.

25 MR. HAVILAND: You do it your way,

1 and I do it mine.

2 MR. FORST: Yeah, well, there's a
3 right way.

4 MR. HAVILAND: Well, you can go
5 teach law school.

6 MR. FORST: I do.

7 MR. HAVILAND: Good. Wonderful.
8 I'm sure the Virginians love it.

9 BY MR. HAVILAND:

10 Q Exhibit 19, sir, I don't think
11 you're copied on it, but let me take a moment to
12 see if you are.

13 Do you know who Steve Brown is?

14 A No.

15 Q Okay. Do you recognize the people
16 on the email thread?

17 A Some of them.

18 Q Who do you recognize?

19 A Let's see, Bill Martin --

20 (Reporter clarification.)

21 THE DEPONENT: Rob Osborne,
22 Emily Vonder Haar.

23 (Discussion held off the record.)

24 BY MR. HAVILAND:

25 Q Sorry, Doctor. So, my question was

1 more focused on -- obviously, you know
2 Mr. Osborne.

3 Anyone in your group at the time in
4 2021 -- I know you transitioned over to Cigna,
5 and are currently a consultant. This is the end
6 of your tenure as an employee of Cigna, right?

7 A That's correct.

8 Q All right.

9 A This is nine days before I finished.

10 Q Okay. Anyone you recognize that
11 was in your practice group that got this email?

12 A No.

13 Q Steve Brown, his title on the back
14 page says he's the director of pharma
15 contracting; do you see that?

16 A Yes.

17 Q And that's the group that actually
18 contracts with pharmaceutical companies, right?

19 A Yes.

20 Q And there is an actual agreement
21 that I utilized with Mr. Shirey at his
22 deposition, but you'll see the PDF attachment
23 says, 2021 Pharmacy Product Purchase and Services
24 Agreement.

25 Do you see that?

1 A Yes.

2 Q And there's some highlights given
3 by Mr. Brown. The client was ANI
4 Pharmaceuticals; do you see that?

5 A Yes.

6 Q The brand/generic name of the
7 product was Corticotropin [sic] Gel, repository
8 corticotropin injection, right?

9 A Correct.

10 Q And that's similar to Acthar,
11 correct?

12 MR. FORST: Objection to the form.

13 THE DEPONENT: I don't know.

14 BY MR. HAVILAND:

15 Q Well, you know that Acthar's an
16 ACTH?

17 A Yes.

18 Q You know it's corticotropin?

19 A Yes.

20 Q And you know it's injected?

21 A Yes.

22 Q So it's similar to Acthar?

23 A I -- I don't know -- I have no data about
24 if it's compared directly to Acthar or not.

25 Q Okay. The summary says, A new

1 agreement that provides access to this recently
2 FDA-approved product.

3 You have no reason to dispute that
4 the FDA did not approve ANI's corticotropin gel,
5 right?

6 MR. FORST: Objection to the form.

7 THE DEPONENT: Yes, according to
8 this.

9 BY MR. HAVILAND:

10 Q Okay. Well, accepting the Express
11 Scripts document as true, the pharma contracting,
12 what do you know of the PBM did to go back to
13 Mallinckrodt, who holds Acthar, to extract the
14 lower price for Acthar now that there was a
15 competitive agent in the marketplace approved by
16 the FDA?

17 MR. FORST: Objection, assumes
18 facts not in evidence, lack of foundation,
19 calls for speculation.

20 BY MR. HAVILAND:

21 Q What do you know, sir?

22 A Nothing.

23 Q Nothing? I'm sorry?

24 A Nothing.

25 Q Did you know that your company was

1 negotiating a contract for a competitive agent to
2 Acthar before you left?

3 MR. FORST: Objection, assumes
4 facts not in evidence, lack of foundation,
5 asked and answered.

6 THE DEPONENT: I know nothing about
7 this.

8 BY MR. HAVILAND:

9 Q Okay. And no one came to you, in
10 your capacity as the senior vice president in
11 clinical, to ask your opinion about this product
12 or what the company could do to try to lower --

13 MR. FORST: Don, he said at this
14 point in time he knows nothing about this
15 five times.

16 MR. HAVILAND: Excuse me, I haven't
17 finished.

18 MR. FORST: Asked and answered.

19 MR. HAVILAND: Well, you can say
20 that when I'm done, Counsel.

21 MR. FORST: I'm just saying, this
22 is a waste --

23 MR. HAVILAND: You're cutting me
24 off, and you're being rude and impolite.

25 MR. FORST: No, I'm not.

1 MR. HAVILAND: Yeah, you are.

2 MR. FORST: How many times do you
3 want to ask the same question?

4 MR. HAVILAND: So, do you want to
5 teach your students that? I'm going to
6 ask the question. You can object, but
7 we're going to do it the right way.

8 MR. FORST: All right. But we need
9 to move along.

10 MR. HAVILAND: Let's do it the
11 right way.

12 MR. FORST: He says, I know
13 nothing --

14 MR. HAVILAND: Let's do it the
15 right way.

16 MR. FORST: -- I know nothing about
17 this, and we're going to ask five more
18 questions.

19 MR. HAVILAND: Let's keep going,
20 because we'll keep going here, sir.

21 MR. FORST: Okay.

22 MR. HAVILAND: All the time that he
23 takes does not --

24 MR. FORST: It's not going to --

25 MR. HAVILAND: -- come off my time,

1 okay?

2 MR. FORST: -- deter me. It's not
3 going to deter us.

4 MR. HAVILAND: You can do whatever
5 you want.

6 MR. FORST: You're wasting time by
7 asking questions --

8 MR. HAVILAND: No, I'm not.

9 MR. FORST: -- that have been
10 answered.

11 MR. HAVILAND: I know you don't
12 like it, but I'm going to ask them.

13 MR. FORST: No, I don't mind it.
14 You're wasting your own time. I'm saying
15 let's get to things where he has knowledge
16 of. This is yet another document he's not
17 on. It's probably 15 of today.

18 MR. HAVILAND: Are you done? You
19 want to keep going? You want to put him
20 on a meter?

21 MR. FORST: I don't know what that
22 means.

23 MR. HAVILAND: Are you done?

24 MR. FORST: I mean, ask the
25 question; you'll get the same answer.

1 MR. HAVILAND: Are you done?

2 MR. FORST: I'm waiting for the
3 question.

4 MR. HAVILAND: Are you finished?

5 MR. FORST: I'm done until the
6 question.

7 MR. HAVILAND: I want to make sure
8 you have your opportunity to object your
9 speaking objection.

10 MR. FORST: Okay. I'm objecting,
11 asked and answered.

12 MR. HAVILAND: Perfect.

13 BY MR. FORST:

14 Q Dr. Miller, a very simple question
15 for you.

16 This is before you left the
17 company, right? December 21, 2021, right?

18 A I'm -- at this point in time, I changed --
19 I'm with Cigna, in my responsibility to Cigna.

20 Q But Express Scripts is still a
21 subsidiary PBM within Cigna for which you had
22 some involvement throughout your tenure at
23 Express Scripts, correct?

24 A Correct. Correct.

25 Q Okay. And you said you are unaware

1 that Express Scripts was in active negotiations
2 to contract for a competitive agent to Acthar,
3 correct?

4 MR. FORST: Objection, assumes
5 facts not in evidence, lack of foundation,
6 asked and answered.

7 THE DEPONENT: Correct.

8 BY MR. HAVILAND:

9 Q Okay. And my question to you, sir,
10 is, you have no knowledge, right, from the time
11 that you were an active employee -- and I'm only
12 going to go up to the end of 2021 at this point,
13 right -- of any effort by Express Scripts or
14 Cigna to go back to Mallinckrodt, the
15 manufacturer of Acthar, to negotiate a lower
16 price for Acthar, using the tool that we talked
17 about this morning, having in the marketplace a
18 competitive agent to Acthar, FDA-approved, you
19 have no knowledge that that was ever done, right?

20 A I have --

21 MR. FORST: Objection -- objection,
22 vague and ambiguous, asked and answered,
23 lack of foundation.

24 BY MR. HAVILAND:

25 Q Go ahead.

1 A I -- I don't know what anyone has done
2 with this information.

3 Q You have no knowledge of efforts to
4 reach out to Mallinckrodt, correct?

5 A I don't know if they have or have not,
6 correct.

7 Q All right. After you transitioned
8 to your role as a consultant in 2022, have you
9 obtained knowledge that Express Scripts or Cigna
10 have gone back to Mallinckrodt, using the fact
11 that it now has a contract to distribute ANI
12 Pharmaceutical's product, to lower the price of
13 Acthar?

14 MR. FORST: Objection, assumes
15 facts not in evidence, lack of foundation,
16 and asked and answered multiple times.

17 BY MR. HAVILAND:

18 Q You can answer.

19 A All right. So, I -- as a consultant to
20 the company, I would have -- this is not under my
21 purview. I have no knowledge.

22 Q Okay. What is your current
23 purview, sir?

24 A I do special projects with the company.

25 Q For instance?

1 A We have a project called The Future of
2 Healthcare.

3 Q Okay. No special project where
4 you're looking at high-cost specialty medications
5 and ways to bring down the costs, right?

6 A No.

7 Q All right. After 60 Minutes took
8 place, do you recall the company changing the
9 prior authorization for Acthar?

10 A I think we discussed this previously. I
11 think they -- they review their criteria on an
12 annual basis, and I think our Medicare criteria
13 changed.

14 Q Well, I don't think I mentioned
15 prior authorization, sir. I think this is the
16 first time.

17 You said earlier in response to my
18 question that the coverage criteria was reviewed,
19 and the coverage criteria was changed for
20 Medicare, right?

21 A The -- where the drug was placed in
22 formulary changed from include -- for Medicare
23 formulary changed from include to optional.

24 Q All right. That's a coverage
25 issue, where it's placed in terms of the

1 formulary position?

2 A Correct. It -- often, with coverage
3 changes, become changes in utilization
4 management.

5 Q That's a separate issue, though,
6 you'd agree?

7 A Correct.

8 Q And are you aware that there was a
9 change in the prior authorization policy at
10 Express Scripts after 60 Minutes with respect to
11 Acthar?

12 A No.

13 Q All right. Let's go back to a
14 subject from this morning. You had wanted to
15 see, I think, the transcript and the comments,
16 and I want to go back to the Citibank situation
17 and make sure I have a clear record on that in
18 terms of what you said, what your position was at
19 the time and after.

20 I'm going to go ahead and mark this
21 into the record as Exhibit 20. It was previously
22 marked as Henry Exhibit 32. I'm just going to
23 write Miller 20.

24 (Exhibit 20 was marked.)

25 BY MR. HAVILAND:

1 Q There's the exhibit, sir.

2 A Thanks.

3 MR. FORST: Thank you.

4 MR. HAVILAND: Yep. If you don't
5 mind my little note about Citibank, you
6 can have that one (handing).

7 BY MR. HAVILAND:

8 Q Dr. Miller, do you see Exhibit 32
9 [sic]? For the record, it's
10 ExpressScripts0834225 through 4227. It's an
11 email from --

12 A I don't see --

13 Q Sorry? Yeah, it's -- the thread
14 starts with Brian Henry. I'm not clear who he
15 sent it to. Well, let's -- let's start at the
16 beginning. It's actually begun with a piece by
17 Lynnette Lopez at Business Insider.

18 Do you see that on page 2?

19 A Yes. Yep.

20 Q June 5th. And the reporter writes,
21 We are working to publish a story on comments
22 Everett Neville, ESRX Senior Vice President,
23 Supply Chain and Specialty, and Dr. Steve Miller,
24 ESRX Chief Medical Officer, made Re the company's
25 relationships with Acthar. I've pasted the

1 comments we're highlighting below. They're very
2 critical of Acthar and its efficacy. A few
3 questions.

4 I'll skip those for the moment.

5 You see down the -- the bottom, it says, and
6 she's attempting to quote, Everett Neville,
7 senior vice president of supply chain and
8 specialty, and she repeats, Everett Neville is
9 responsible for all aspects of supply chain and
10 specialty business, and then has quotes that
11 she's ascribing to you.

12 Do you see that?

13 A The ones at the very bottom?

14 Q Yeah. So let's just go through
15 them --

16 A Yes.

17 Q -- because I think Mr. Neville had
18 comments, and you had comments.

19 Is it accurate Mr. Neville said ---
20 and -- and what Mr. Henry did, he sent the
21 transcript, but it's a little -- little difficult
22 to read.

23 Mr. Neville said, I don't think
24 it's a very great -- it's a petty poor drug with
25 a very limited need, and certainly Steve could

1 comment -- that's you, Dr. Miller?

2 A Yes.

3 Q -- completely, you know, and,
4 Steve, you could chime in here too, but I think
5 Steve and I would both agree, and I think
6 everybody in our company would agree, that the
7 product is vastly overpriced for the value.

8 Did I read that correctly?

9 A Yes.

10 Q He then finally says, I personally
11 told their management team that the drug was
12 hugely overpriced. I know Steve has as well.

13 Do you see that?

14 A Yes.

15 Q Now, they were comments made by
16 Mr. Neville at the conference, right?

17 A Yes.

18 Q Now, let's just unpack that before
19 you -- before we go to your comments.

20 Did you agree, when Mr. Neville
21 said you would likely agree, that it's a pretty
22 poor drug with very limited need?

23 A That's correct.

24 Q Okay. You also agreed with his
25 statement that it's hugely overpriced?

1 A That is correct.

2 Q Now, did you, in fact, as he says
3 you might have, personally tell Mallinckrodt's
4 management team that their drug is hugely
5 overpriced?

6 A Their management team has heard directly
7 from me, and I believe it was at one of our
8 conferences, because they were also a client of
9 ours, that their drug was -- that -- I use this
10 as an example of an overpriced drug.

11 Q So, you met with Mallinckrodt
12 management directly and told them that Acthar is
13 overpriced?

14 A No, I presented at our Outcomes
15 Conference, of which they were in attendance --
16 representatives of Mallinckrodt were in
17 attendance, and told them that it was overpriced.

18 Q This is the annual conference that
19 Express Scripts puts on for its clients?

20 A Correct.

21 Q You presented Colo outbreak
22 sessions at those -- at that conference?

23 A I presented at both the main part of the
24 conference and in the Colos.

25 Q And in what year was this where you

1 made the comments with Mallinckrodt in the
2 audience?

3 A I don't -- I can't tell you which year it
4 was.

5 Q Well, this email's from June 5,
6 2017. It's a couple months after the Rockford
7 lawsuit was filed.

8 So was it before that, was it in
9 the spring meeting?

10 A It could have been years before.

11 Q Do you have prepared comments?

12 A I never have prepared comments.

13 Q Okay. Is there a transcript of
14 your comments from those conferences?

15 A Not that I'm aware of.

16 Q Okay. So it's a live setting, you
17 don't have notes. You just presented, and you
18 said, Acthar is hugely overpriced?

19 A I -- not -- I don't know if I used those
20 words.

21 Q Okay.

22 A I used -- used Acthar and other drugs as
23 examples of pharmaceutical egregious pricing.

24 Q Okay. And you know that
25 Mallinckrodt executives were in the audience?

1 A Yes.

2 Q Who?

3 A I don't know -- I shouldn't say

4 "executives." I know Mallinckrodt

5 representatives come to those conferences.

6 Q I want to know if you know if

7 Mallinckrodt executives were in the audience when

8 you made those comments.

9 A I don't know. I doubt it, because we

10 don't get executives to those conferences.

11 Q Who comes to the conferences?

12 A It's usually the people that manage --

13 it's HR people from those companies and sometimes

14 the account managers.

15 Q And are they management teams?

16 A I don't -- I don't know their status

17 within the company.

18 Q Well, Mr. Neville says, I

19 personally told their management team. I know

20 Steve has as well.

21 When did that happen?

22 A I believe that their management team has

23 probably heard it indirectly through these

24 people, but I have not specifically talked to

25 their management.

1 Q Okay. So, Mr. --

2 A I -- I did have a meeting at some point in
3 time with their chief medical officer.

4 Q Mr. Romano?

5 A Mr. Romano.

6 Q Dr. Romano?

7 A Dr. Romano.

8 Q When did that happen?

9 A Again, I can't tell -- I don't know the
10 specific date.

11 Q It would be helpful, sir, just to
12 orient it around some timeline.

13 A I -- I would love to give you a more
14 specific -- I just -- these are -- I work on lots
15 of drugs with lots of companies. I speak to lots
16 of chief medical officers and other, you know,
17 management. I just can't help you with the
18 specifics on the time.

19 Q You do -- all right. Whatever the
20 date was, you met with Dr. Romano?

21 A I have met with Dr. Romano.

22 Q More than once?

23 A Only once.

24 Q And do you remember the context?

25 A I believe they were coming to our site for

1 a tour of our innovation lab.

2 Q Okay. And that's the lab Mr. Henry
3 said is a -- it's actually not a lab that
4 develops like with beakers. It's an innovation
5 lab to think about issues?

6 A It's about data science.

7 Q The data center is also there?

8 A How would you -- it's not quite a data
9 center. It's -- what we do is it's a way to
10 visualize data. The data exists elsewhere. It's
11 to be able to put data up in a visual way for
12 clients and others to better understand what's
13 happening in drug prices, what's happening to
14 disease in the community, you know, how our
15 services can assist them.

16 Q And why was Mallinckrodt invited on
17 this particular day?

18 A Because Mallinckrodt also was a client of
19 Express Scripts.

20 Q So pharma companies come to the
21 innovation lab?

22 A All the time.

23 Q Okay. I didn't understand that
24 when I asked Mr. Henry. He said it was more
25 health plan-focused in terms of the payers --

1 A Well, there --

2 MR. FORST: Let him finish the
3 question, Dr. Miller.

4 BY MR. HAVILAND:

5 Q -- but other companies come as
6 well?

7 A So, we have lots of pharma company
8 clients, and many of them send the HR department
9 side of their companies to our innovation lab.

10 Q What do you recall about this
11 meeting with the Mallinckrodt folks?

12 A I know they came. I know that -- I
13 remember that they were unhappy with the -- that
14 I had been vocally critical of their product,
15 and -- and that's the main thing I remember from
16 the meeting.

17 Q Well, other than the -- this oral
18 report you gave at one of these Express Scripts
19 meetings, the first time I see you in the record
20 publicly speaking about Acthar and its price is
21 this Citibank conference.

22 Did you speak publicly, and it was
23 reflected in print prior to that?

24 A Not that's reflected in print that I know
25 of, but I have -- I give dozens of talks each

1 year, and I frequently talk about egregious
2 pricing. That's what I do, and -- and Acthar was
3 one of the examples I would frequently used.

4 Q And you don't ever take notes, and
5 you don't ever -- well, you do do PowerPoints. I
6 have PowerPoints.

7 A I do PowerPoints, but I speak
8 extemporaneously for a reason. So, I never use
9 notes, because the presentations come off better
10 when you are extemporaneous, at least I believe
11 so, and so there is no notes I use.

12 Q So, you're saying you've been a
13 vocal critic of Acthar --

14 A I've been a vocal critic -- I'm sorry.

15 Q Yeah, I just want to orient the
16 question to a time.

17 That you were a vocal critic of
18 Acthar's pricing prior to June 2017 after the
19 Rockford lawsuit?

20 A Yes.

21 Q Okay. And do you know how far back
22 in time you were a vocal critic?

23 A You know, I -- again, I've been a vocal
24 critic of pharmaceutical companies from almost
25 day one of my coming to the company and have

1 criticized many, many different drugs, including
2 Acthar, but I can't give you a precise time of
3 when I started --

4 Q Well, this particular --

5 A -- when I talked about them.

6 Q Sorry. This particular criticism
7 got the ire of management at Mallinckrodt; you're
8 aware of that?

9 A Yes.

10 Q Okay. Did you speak with
11 Dr. Romano?

12 A I don't remember the date of when I spoke
13 to Dr. Romano, because the only time I spoke to
14 him was in the -- when they came to the
15 innovation lab.

16 Q I'm going to show you a document
17 that was produced by Mallinckrodt in this case
18 for some reason. It's -- it's an odd printout.
19 It didn't print the Bates number. Let me see if
20 I have that. I don't think I have that from
21 Henry's. Let me show it to your counsel first.

22 It's an email thread involving
23 Brian Henry that then goes out to Everett Neville
24 and you and Tim Wentworth, and it concludes with
25 an email from Everett Neville to Brian Henry.

1 I'm going to show it to your counsel before I
2 show it to you, and I'm going to read for the
3 record.

4 This is Exhibit 20?

5 (Discussion held off the record.)

6 MR. HAVILAND: Oh, I had marked it.

7 My apologies. It was marked as

8 Exhibit 33, and now it's 21. There we go.

9 Oh, this is the Henry exhibit. It was
10 marked as Henry Exhibit 33. It's now
11 Miller Exhibit 21.

12 (Exhibit 21 was marked.)

13 BY MR. HAVILAND:

14 Q Let me read for the record. This
15 is June 5, sir, the same time as the email thread
16 that we're looking at. The conference was the
17 day before, I presume. Ms. Lopez's email is at
18 7:30 a.m. Well, it was obviously before, because
19 she knew what you said.

20 A Okay.

21 Q This is the same day as that email
22 we looked at with the transcript. Mr. Henry
23 says, FYI, I spoke to my counterpart at
24 Mallinckrodt just now. As you might guess, they
25 were surprised by the comments in the Citi

1 report. They also mentioned that Everett and
2 Steve's counterparts might be reaching out to
3 them either today or tomorrow.

4 And it's your testimony that didn't
5 happen?

6 A I don't remember that happening.

7 Q Okay. Well, you do remember the
8 innovation lab --

9 A I just --

10 Q -- and it wasn't --

11 A I remember -- yeah, the one encounter at
12 the innovation lab.

13 Q Yeah, but that wasn't in relation
14 to the Citibank commentary.

15 A I don't know its relationship to the
16 Citibank commentary.

17 Q Well, do you recall at the
18 innovation lab meeting, Dr. Romano raised your
19 comments with you?

20 A I -- at the innovation lab meeting, I know
21 Dr. Romano made it clear that he not -- they
22 were -- Mallinckrodt was not pleased with our
23 criticizing the price.

24 Q Okay. And you don't know if that
25 was directly relating to this Citibank

1 conference, right?

2 A I -- I cannot tell you if it's from other
3 comments I've made in other settings or from the
4 Citibank.

5 Q Okay. Reading further Mr. Henry's
6 email, They were concerned that there was a
7 difference of opinion between what we have been
8 talking about and what was said at Citi.

9 Do you see that?

10 A I don't see that.

11 Q I'm in the fifth line down. It was
12 the end of the sentence I started to read.
13 They -- Mallinckrodt -- also mentioned that
14 Everett and Steve's counterparts might be
15 reaching out to them today or tomorrow, as they
16 were concerned that there was a difference of
17 opinion between what we have been talking about
18 and what was said at Citi.

19 Do you see that?

20 A Yes.

21 Q So Mr. Henry, speaking to his
22 counterpart at Mallinckrodt, was reporting to
23 you, Mr. Neville, and the CEO that their view was
24 your comments were inconsistent with what you had
25 been talking about previously?

1 A I don't know who "we" is.

2 Q Okay. It goes on further,
3 Primarily they say their investors are concerned
4 that we may be moving away from them or not
5 providing access to the drug in the future. She
6 also indicated that Mark Trudeau may reach out to
7 Tim at some point. I don't know if that will
8 happen, but it may.

9 Do you know if that happened?

10 A I do not know.

11 Q Do you know if Mr. Neville's
12 counterpart reached out to him?

13 A I do not know.

14 Q He then says further, She asked
15 that in the future, if we are asked about Acthar
16 Gel, we refrain from commenting about it. I
17 explained that we would prefer not to talk about
18 it, however, we do get asked about it at investor
19 conferences and elsewhere. We would much prefer
20 to talk about our core growth strategy and how we
21 are delivering value.

22 Do you see that?

23 A Yes.

24 Q And then that thread goes up, and
25 Mr. Neville says to Mr. Henry, you, and

1 Mr. Wentworth, Did you provide the full
2 transcript? Not that they will like it, but the
3 context is important.

4 Do you see that?

5 A Yes.

6 Q Mr. Henry says, They do have it.
7 They were concerned about your and Steve's
8 comments about high pricing and a perceived lack
9 of value and that, quote, we have told them that,
10 close quote, language.

11 Do you see that?

12 A Yes.

13 Q It seems to me, reading this,
14 Mr. Henry is saying that Mallinckrodt doesn't
15 agree that you have told them in the past that
16 you believe their product is high-priced?

17 MR. FORST: Objection, calls for
18 speculation, mischaracterizes the
19 document.

20 THE DEPONENT: Yeah, I don't know
21 what Mallinckrodt believes or not. I
22 just -- I can read these just like you do,
23 but I'm not -- you'll have to ask the
24 people directly involved with Mallinckrodt
25 what they believe. I don't --

1 BY MR. HAVILAND:

2 Q Well, I am going to do that, sir.

3 A Good.

4 Q And Mr. Henry described himself as
5 the eyes, ears, and mouth of the company, who is
6 the head of communications at this time, right?

7 A Yes.

8 Q And part of his role was to listen
9 to what the media was saying, right?

10 A Um-hmm.

11 Q Yes?

12 (Reporter clarification.)

13 THE DEPONENT: Yes.

14 BY MR. HAVILAND:

15 Q And then vet that within the
16 organization, and he would typically do that with
17 leadership through his FYI emails we've seen,
18 right?

19 MR. FORST: Objection to the form.

20 You can answer.

21 THE DEPONENT: Yes.

22 BY MR. HAVILAND:

23 Q So, he would take media commentary
24 that involves Express Scripts, and at times
25 involved Express Scripts, Mallinckrodt, and

1 Acthar, and he would send that out to you and
2 others in the organization, right?

3 A Correct.

4 Q And then he would talk amongst the
5 leadership, to the extent it's necessary, to
6 formulate whether or not there'd be a response,
7 and if so, what that response would be, and
8 you -- you have been contacted at times about
9 that?

10 A Correct.

11 Q And do you recall any time when you
12 said to Mr. Henry, I want you to put out there
13 that I say that Acthar is high-priced?

14 MR. FORST: Objection to the form
15 of the question.

16 THE DEPONENT: I have never
17 specifically said that to Brian. I think,
18 as these emails even indicate, I have made
19 it very clear I was unhappy with the price
20 of Acthar. I've said so publicly, and
21 obviously Mallinckrodt does not like us
22 saying that.

23 BY MR. HAVILAND:

24 Q Okay. And then at some point, you
25 had a meeting with them at the innovation lab,

1 and you were there, right?

2 A Yes.

3 Q Okay. Do you recall who else was
4 there from Express Scripts?

5 A I do not.

6 Q Do you recall who was -- you said
7 Dr. Romano was there?

8 A I just remember that's when I met
9 Dr. Romano.

10 Q First and only time?

11 A I believe so.

12 Q Ever talked to him on the phone?

13 A I may have talked to him on the phone
14 once.

15 Q About?

16 A I just -- I believe I would -- I believe I
17 may have talked to him prior to their visit, just
18 about the upcoming visit.

19 Q Okay. I'm just pointing out, sir,
20 that we have no written record of this meeting
21 ever happening, either from Mallinckrodt or
22 Express Scripts. So, I want to know what you
23 know about it. Not saying it didn't happen, but
24 you had a conversation about the meeting. The
25 meeting took place.

1 Did you ever email Dr. Romano?

2 A All my emails have been made available.

3 Q Okay. So, you didn't?

4 A I don't remember ever emailing him, no.

5 Q Okay. And what specifically do you
6 recall about what happened at the innovation lab
7 meeting?

8 A I only remember that -- the only thing
9 that stuck out to me that I remember is that they
10 did not like our publicly talking about the
11 price -- the high price of their drugs, and that
12 they were upset about it.

13 Q Was there another purpose of the
14 innovation lab meeting?

15 A The purpose is -- when we have clients in,
16 is to show them our capabilities, and so -- you
17 know, like I said, we've had dozens and dozens,
18 if not hundreds, of these meetings with clients,
19 and so, they -- they usually don't stand out in
20 my mind as anything memorable.

21 Q Do you recall raising with them the
22 indication-specific pricing model that you were
23 working on?

24 A I've never spoken to them about that that
25 I remember.

1 Q Well, I see an acknowledgement at
2 the CEO level of Mallinckrodt about that.

3 Did you ever talk to Mark Trudeau
4 directly about it?

5 A I've never talked to Mark -- oh.

6 MR. FORST: Let me just object to
7 the characterization as lack of
8 foundation, assumes facts not in evidence.

9 BY MR. HAVILAND:

10 Q That's fine.

11 A I've never spoken with Mark Trudeau.

12 Q Did you speak to Tim Wentworth
13 about a meeting he had with Mark Trudeau, and
14 specifically about your indication-specific
15 pricing model.

16 A Not that I remember.

17 Q Okay. And other than their telling
18 you and saying they were unhappy of your
19 criticizing their product, what else was
20 discussed at the innovation lab meeting?

21 A Like I said, I can't remember any of
22 the -- anything else that stuck in my mind. It
23 was just --

24 Q You remember that, though?

25 A Yeah, because that's -- you know -- you

1 know, clearly, when you've upset your client, you
2 remember who -- you know, them being upset.

3 Q Okay. And did they say they were
4 going to do anything about it?

5 A I don't remember. I don't -- I -- no, I
6 don't remember anything about that.

7 Q And after that meeting and
8 conversation, did you observe that Mallinckrodt
9 was doing anything to change the relationship
10 with Express Scripts, either with CuraScript,
11 Accredo, the hub, or the PBM?

12 A I was unaware of any change in the
13 relationship.

14 Q Okay. So, despite the -- your
15 comments and that meeting where they said they
16 were not happy with them, to your knowledge,
17 there was no change in the business relationship
18 between the two companies in any facet that I
19 described?

20 MR. FORST: Objection, asked and
21 answered.

22 THE DEPONENT: I'm unaware of any
23 changes.

24 BY MR. HAVILAND:

25 Q All right. After the City of

1 Rockford filed suit against Express Scripts,
2 there was an effort to figure out how much money
3 the various Express Scripts entities make off of
4 Acthar.

5 Do you recall that?

6 A No.

7 Q Dr. Miller, I'm going to show you
8 what I've marked as Exhibit 22. It's
9 ExpressScripts0837549 to 550.

10 (Exhibit 22 was marked.)

11 MR. FORST: Thank you.

12 BY MR. HAVILAND:

13 Q You'll see you're copied on the
14 email.

15 A Yep.

16 Q And it -- it generated originally
17 from Jennifer Luddy to Brian Henry from an email
18 from Andrew Left of Citron Research.

19 Do you see that on the back side?

20 A Yes.

21 Q And Mr. Left asks, How much does
22 Express Scripts make off each bottle of Acthar?

23 Do you see that?

24 A Yes.

25 Q And he says, I want to be accurate

1 in light of recent comments made by Dr. Miller.

2 Does the company plan on modifying its
3 relationship with Acthar, not on the PBM side,
4 but on the pharmacy side?

5 Do you see that?

6 A Yes.

7 Q And this is the same day as the
8 emails we were looking at after the Citibank
9 conference where you made those comments, right?

10 A Correct.

11 Q And then Mr. Neville -- well,
12 Mr. Henry has a comment, he says, Appreciate
13 guidance. That's when you're copied on. Neville
14 says, I'll defer to Ben. Practically, it's about
15 \$1 million rebate keep.

16 Do you see that?

17 A Yes.

18 Q Did you understand that to mean
19 that's the money that the PBM makes off rebates
20 for Acthar?

21 A Well, they -- while I'm copied on these
22 things, I didn't -- I don't have much
23 recollection of this. I don't know what
24 Everett's -- what Everett's [sic] means by that.

25 Q Well, Left is writing because he's

1 keying off the comments you made and Mr. Neville
2 made about the value of Acthar. He's asked
3 specifically about how much Express Scripts makes
4 off each vial, specifically, United Bio,
5 CuraScript, and Accredo. Mr. Neville writes
6 back, It's a \$1 million rebate keep.

7 The PBM gets rebates, right?

8 A That's correct.

9 Q And then if you go up, Mr. Neville
10 says -- oh, I'm sorry, Mr. English writes, I've
11 provided talking-points to Ben in the past,
12 However, I'm forecasting 8.7 million in gross
13 margin in 2017 at CuraScript.

14 Do you see that?

15 A Yes.

16 Q He would know that, because he was
17 the president at the time?

18 A Correct.

19 Q And then if you go up even further,
20 Ben Bier says, In 2016 CuraScript Distribution
21 had 7.3 million in gross margin, and 4.1 --
22 4.4 million in EBITDA. Same time period in 2016,
23 Accredo made less than 2 million, UBC earned
24 about 6 million, with the majority from the
25 reimbursement hub. And he says, When you add the

1 rebates in, it equates to approximately
2 13 million in total for the enterprise.

3 Do you see that?

4 A Yes.

5 Q You had no reason to dispute that
6 these folks that were weighing in didn't know
7 what they were talking about in terms of monies
8 made by the various arms of Express Scripts off
9 Acthar, right?

10 MR. FORST: Objection to the form
11 of the question, lack of foundation.

12 THE DEPONENT: Again, outside my
13 domain, but I have no reason to believe
14 they don't have their numbers right.

15 BY MR. HAVILAND:

16 Q Well, and when Mr. Henry wants to
17 get an answer and ask for guidance --

18 A Um-hmm.

19 Q -- he wants to get it from the
20 people that know, right?

21 MR. FORST: Objection to the form.

22 BY MR. HAVILAND:

23 Q Is that right?

24 A Assume so, yep.

25 Q And you would expect that the folks

1 responding, Mr. Neville and Mr. Bier, are going
2 to give accurate information back, right?

3 MR. FORST: Objection.

4 THE DEPONENT: Correct.

5 BY MR. HAVILAND:

6 Q And so, you have no reason to
7 dispute that, in 2016, Express Scripts made about
8 13 million off of Acthar?

9 MR. FORST: Objection, foundation,
10 calls for speculation.

11 THE DEPONENT: That's what the
12 documents seem to indicate.

13 BY MR. HAVILAND:

14 Q Okay. And do you know what was
15 done with this information? Was it shared
16 publicly?

17 A I have no idea.

18 Q Okay. Did you ever see in the
19 public, Express Scripts telling the public, We
20 make \$13 million off of Acthar?

21 MR. FORST: Objection to the form.

22 THE DEPONENT: Don't recall ever
23 seeing that.

24 BY MR. HAVILAND:

25 Q Okay. And you don't know what came

1 of that thread after you were copied on it; is
2 that fair?

3 A Correct.

4 Q Were you aware of how
5 Express Scripts coordinated its public messages
6 with Mallinckrodt?

7 MR. FORST: Objection to the form.

8 THE DEPONENT: I'm unaware of any
9 coordination with Mallinckrodt.

10 BY MR. HAVILAND:

11 Q Let me show you what I'm going to
12 mark as Exhibit 23.

13 (Exhibit 23 was marked.)

14 BY MR. HAVILAND:

15 Q Exhibit 23 to your deposition, sir,
16 is --

17 A Yep.

18 Q -- Bates number
19 ExpressScripts0959385. You see it's
20 June 5, 2017. It's a little later in the day
21 from the thread we just looked at.

22 Mr. Henry writes, This is how
23 Mallinckrodt proposes to explain to its investors
24 the relationship with us. Let me know if you
25 have any edits.

1 Do you see that?

2 A Yes.

3 Q And then there's a description
4 there about Express Scripts: Mallinckrodt has
5 several distinct arm's-length contracts for
6 services with Express Scripts subsidiaries for
7 Acthar, CuraScript, Accredo, United BioSource,
8 right?

9 A Yes.

10 Q And you weren't involved directly,
11 as I can see, in this.

12 You weren't -- you have no personal
13 knowledge of how Express Scripts coordinated
14 responses to media inquiries with Mallinckrodt;
15 is that fair?

16 MR. FORST: Objection, assumes
17 facts not in evidence, mischaracterizes
18 the document, foundation.

19 THE DEPONENT: Correct.

20 BY MR. HAVILAND:

21 Q A little after those emails,
22 Mr. Wentworth had a conversation with
23 Mr. Trudeau.

24 Are you aware of that?

25 A No.

1 Q I'll show you what I've marked as
2 Exhibit 24 to your deposition, Dr. Miller.

3 (Exhibit 24 was marked.)

4 BY MR. HAVILAND:

5 Q Exhibit 24 is Bates-numbered
6 ExpressScripts5353147. You'll see the thread is
7 from a Meredith Fischer, who Mr. Henry identified
8 as his counterpart over at Mallinckrodt. She
9 writes to Mr. Henry and cc'ing -- and cc'ing some
10 folks within Mallinckrodt. It says, Follow-up to
11 Wentworth/Trudeau conversation.

12 Do you see that Re line there?

13 A Yes.

14 Q "Morning, Brian, hope all is well.
15 Just spoke to Mark Trudeau, who had concluded a
16 call with Tim related to our shared interests and
17 challenges with Andrew Left. He said they had a
18 great call, and they're not only aligned about
19 the value and importance we mutually place on the
20 relationship between our companies, but agreed
21 that they, themselves, and our team should be
22 tightly aligned on mutual messages when at the
23 upcoming Goldman conference. To that end, Tim
24 suggested it would be good to work with you to
25 provide your guys a set of talking-points on

1 Mallinckrodt and the context of Acthar."

2 Do you see that?

3 A Yes.

4 Q You're not copied in this thread,
5 nor the one that Mr. Henry sent to the CEO.

6 Were you made aware that there had
7 been this direct conversation between the CEOs
8 about the shared interests and challenges and
9 alignment between the companies?

10 MR. FORST: Objection, asked and
11 answered.

12 THE DEPONENT: I do not remember
13 any of this, no.

14 BY MR. HAVILAND:

15 Q Were you at the Goldman conference?

16 A No.

17 Q Do you know if, at any point during
18 the conversations between the CEOs, the issue of
19 your comments of -- about Acthar during the
20 Citibank conference came up?

21 MR. FORST: Objection, asked and
22 answered.

23 THE DEPONENT: Don't know.

24 BY MR. HAVILAND:

25 Q And, sir, when I say "do you know,"

1 I want to know if you know. That's all.

2 A I said that. I don't --

3 Q Okay.

4 A I don't know.

5 Q That's fair. I realize it's above
6 your pay grade.

7 We're dealing with the CEOs, right?

8 MR. FORST: Well, let's not harass
9 the witness and be condescending.

10 MR. HAVILAND: I'm not harassing
11 the witness, sir.

12 MR. FORST: A little bit. Again,
13 he said he's not aware of the
14 conversations. Then you're asking him
15 about the specifications of the
16 conversations. It's --

17 MR. HAVILAND: I'm going to keep --

18 MR. FORST: -- mind-boggling.

19 MR. HAVILAND: I'm going to keep
20 going, all right?

21 BY MR. HAVILAND:

22 Q Because, sir, the jury can see what
23 I'm doing. The jury sees that Mr. Henry looped
24 you in --

25 MR. FORST: That's --

1 BY MR. HAVILAND:

2 Q -- to conversations --

3 MR. FORST: -- not a question.

4 BY MR. HAVILAND:

5 Q -- asked your opinion, and then
6 another conversation took place between the CEOs.

7 You've testified you've had
8 conversations with Mr. Wentworth, right?

9 A Correct.

10 Q But you did not have a conversation
11 with Mr. Wentworth at this time in relation to
12 your comments at Citibank or otherwise, right?

13 A Not that I remember.

14 Q Okay. That's all I want to know.

15 A Yes.

16 Q And Mr. Wentworth never reached out
17 to you to talk to you about your comments you
18 made at the Citibank conference, right?

19 A Not that I remember.

20 Q Fair enough. Okay. I'm going to
21 show you what I'm going to mark as -- oh,
22 shoot -- Exhibit 25 to your deposition.

23 (Exhibit 25 was marked.)

24 BY MR. HAVILAND:

25 Q There you go, Dr. Miller.

1 A Thank you.

2 Q Exhibit 25, Dr. Miller, is an
3 Express Scripts document, ExpressScripts0834253
4 through 4265. There's a foundation because
5 you're on it, sir.

6 Do you see that?

7 A Yes.

8 Q Ben Bier writes to Tim Wentworth,
9 you, and others on June 12, about a week after
10 the emails we just looked at, Express Scripts
11 questions at the Goldman Sachs conference and
12 Acthar talking-points.

13 Do you see that?

14 A Yes.

15 Q "Tim, attached is the Q&A we've
16 developed for your fireside chat at the
17 Goldman Sachs conference on Tuesday."

18 Again, you did not attend that?

19 A Correct.

20 Q And you didn't talk to the CEO
21 about it, right?

22 A Not that I remember.

23 Q "I've also attached some proposed
24 talking-points related to Acthar to the extent
25 that questions are brought up at any of our three

1 investor conferences this week. Let me know if
2 you'd like -- if you'd like to get time together
3 with the group tomorrow to discuss either of the
4 attached documents."

5 I don't know the group he's
6 referring to, but you never get -- did get
7 together in a group setting with the CEO about
8 the Goldman conference, right?

9 A I did not.

10 Q And the talking-points, sir, you
11 can see talk about the, Product attributes.

12 Do you see that?

13 A Yep.

14 Q Services we provide; the PAP
15 program; income received by Express Scripts at
16 UBC based on the number of employees; Acthar is
17 immaterial to our company's financials, and our
18 practice is to not disclose specific terms.

19 Do you see that?

20 A Yes.

21 Q And then, We also provide wholesale
22 distribution services for Mallinckrodt.

23 Do you see that?

24 A Yes.

25 Q It doesn't say "exclusive," does

1 it, sir?

2 A No.

3 Q And then it says, Contracts and
4 services provided to Mallinckrodt are not unique;
5 they are standard in the industry.

6 Do you see that?

7 A Yes.

8 Q Do you agree with that?

9 A Don't know.

10 Q No -- no basis to agree or
11 disagree?

12 A Correct.

13 Q Okay. Acthar pricing: Since 1998,
14 the unit cost of AWP for Acthar has increased on
15 average 36 percent per year.

16 Do you see that?

17 A Yes.

18 Q And, As a PBM, we cannot support
19 price increases on any drug above the rate that
20 is standard for medical inflation.

21 Is that referring to the medical
22 pharma CPI, to your knowledge?

23 A I believe so.

24 Q And that's -- that's a rate that
25 Express Scripts accepts as a reasonable rate of

1 inflation for pharmaceutical products?

2 A It's a -- it's the rate that they
3 historically increase at.

4 Q Well, and that's what I'm trying to
5 get at. This seems to be keying off, as a PBM,
6 Express Scripts can't support increases above
7 that; Express Scripts accepts the pharma CPI rate
8 of about 5 to 7 percent; 5 to 7 percent is a
9 reasonable inflation rate.

10 Is that fair?

11 A That's what our drugs are usually
12 subjected to, correct.

13 Q Okay. And this doesn't say
14 anything than report on the increase over time,
15 and as -- as a PBM, we can't support price
16 increases over the medical inflation rate, right?

17 MR. FORST: Objection to the form.

18 THE DEPONENT: It says, As a PBM,
19 we cannot support drug -- price increases
20 on any drug above the rate that is
21 standard for medical inflation.

22 BY MR. HAVILAND:

23 Q I don't see anywhere here where the
24 talking-points say that Express Scripts is
25 accusing Mallinckrodt of having a high --

1 high-priced -- price for Acthar.

2 MR. FORST: Just -- I'd wait for a
3 question.

4 BY MR. HAVILAND:

5 Q Well, you said it at a conference,
6 and did you tell Mr. Wentworth that, You -- you
7 should say it too?

8 A I was not involved in these preparations.

9 Q Okay. So, that conversation did
10 not happen, right?

11 A I was not involved in these preparations.

12 Q You were copied on them, but they
13 didn't loop you in to the ultimate preparations
14 of Mr. Wentworth's appearance, correct?

15 A Correct.

16 MR. HAVILAND: Are we at an hour
17 yet, because I want to --

18 MR. FORST: We are.

19 MR. HAVILAND: -- move to a
20 different topic?

21 MR. HAVILAND: All right. Let's
22 take a break.

23 MR. FORST: Let's do it.

24 THE VIDEOGRAPHER: We are going off
25 the record at 2:22 p.m.

1 (Break taken.)

2 THE VIDEOGRAPHER: We are back on
3 the record at 2:34 p.m.

4 BY MR. HAVILAND:

5 Q Dr. Miller, I'm going to mark as
6 Exhibit 26 to your deposition what I previously
7 marked at Mr. Henry's deposition as Exhibit 8.

8 (Exhibit 26 was marked.)

9 BY MR. HAVILAND:

10 Q The exhibit's ExpressScripts5484513
11 to 4514. I'm handing that to you now, sir.

12 A Thank you.

13 Q Yep. You'll see it's an email
14 thread. You're not copied on it, but you are the
15 direct subject of it, sir.

16 Earlier we talked about the
17 national meeting of Express Scripts and the
18 separate meetings called Colos, right?

19 A Correct.

20 Q Mr. Henry told me a little bit
21 about that, but this particular email thread is
22 in relation to the -- the May 28 meeting. I
23 think it was around the middle of the month.

24 Do you recall?

25 A I don't remember the exact dates, no.

1 Q Okay. Well, there was a meeting
2 that occurred after the 60 Minutes piece, and I
3 think this email goes to it, because it's
4 discussing whether or not you or someone else
5 should address it.

6 And if you go to Kelly Glogovac's
7 email?

8 A Yep.

9 Q Is it right that Ms. Glogovac and
10 Ms. Thimangu helped prepare you for these
11 meetings?

12 A Yes.

13 Q All right. And the subject is the,
14 Colos, Dr. Miller topics.

15 And so just so the jury's clear,
16 there's the national meeting where you talk,
17 other executives talk, but then there's these
18 breakout meetings with individual clients?

19 A They're not individual -- so, they're
20 clients grouped by common themes, like labor
21 clients or commercial clients, military,
22 government, those type of clients.

23 Q Got it. And in the thread, you'll
24 see the NDPC?

25 A Right.

1 Q What does that stand for?

2 A The National -- National Drug Purchasing
3 Coalition.

4 Q And that's a group of businesses?

5 A It's commercial clients that have created
6 a buying group.

7 Q Not labor, not municipality;
8 it's -- it's businesses?

9 A I believe so.

10 Q Okay. And the CBA beneath that?

11 A CBA -- how quickly I forget these things.

12 Q And then there's the PBMC?

13 A Yeah, the Pharmacy Benefits Management
14 Coalition, so these are also -- they're different
15 business groups that --

16 Q Who have aligned in a buying
17 coalition?

18 A Correct.

19 Q And you would occasionally be
20 invited to go speak at -- at these -- to these
21 folks as an adjunct to the national meeting?

22 A Correct.

23 Q So, in this email from Kelly to
24 Rachel -- and you're not copied on it, you're
25 spoken about -- Kelly says, Hi, Rachel, per our

1 discussion today, I received some feedback from
2 the Colo leads on what they're -- on what they're
3 like -- what they'd like Dr. Miller to cover
4 during the Colo meeting.

5 Do you see that?

6 A Yes.

7 Q "I did say he will do the same
8 presentation across all groups."

9 Do you see that?

10 A Yep.

11 Q And then it's kind of broken down.
12 There's some general topics. The third bullet, I
13 was thinking about incorporating the 60 Minutes
14 thing into Tim's talking-points.

15 Would that have been
16 Tim Wentworth's talking-points?

17 A I believe so.

18 Q Do you recall this particular
19 meeting and whether or not you or Mr. Wentworth
20 addressed the 60 Minutes thing?

21 A I can't -- I don't remember.

22 Q Well, she seems to be trying to
23 figure that out before they work with you whether
24 it would be in Tim's talking-points or whether it
25 would be a Dr. Miller thing.

1 Do you see that?

2 A Yes.

3 Q And you just don't recall how that
4 broke down, who did what?

5 A I don't recall.

6 Q All right. Under the NDPC buying
7 group -- and what I -- how I'm reading this, you
8 tell me if -- if my understanding's wrong, Kelly
9 and Rachel are trying to identify topics that
10 these groups want to discuss in the Colo
11 breakouts with you or sometimes just generally,
12 right?

13 MR. FORST: Objection to the form
14 of the question.

15 BY MR. HAVILAND:

16 Q Is that how you're reading it?

17 A It appears that way, yes.

18 Q And NDPC wanted to talk about drug
19 pricing strategies in light of Acthar and
20 President Trump's drug pricing announcement.

21 Do you see that?

22 A Yes.

23 Q They also wanted to talk about
24 excluding rare disease drugs with poor value,
25 right?

1 A Yes.

2 Q And is that the phenomena you
3 talked about when you talked about the three
4 buckets, that -- that the PBM will actually
5 exclude older medications that don't have value,
6 or is that something else?

7 A That's something else.

8 Q What's Exondys 51?

9 A Exondys 51 was -- is a drug for spinal
10 muscular atrophy.

11 Q And is that something the PBM
12 considered excluding?

13 A We did exclude.

14 Q You excluded it from formularies?

15 A I believe so.

16 Q All right. So, it wasn't put on a
17 tier; it was just excluded entirely?

18 A I believe it was excluded.

19 Q Why?

20 A It doesn't work.

21 Q Why doesn't it work?

22 A I don't know why it doesn't work.

23 Q So, what does it treat?

24 A Spinal muscular atrophy.

25 Q Okay. It says, Poor value.

1 How did you -- how did the PBM come
2 to learn that it didn't work?

3 A Because when you look at the data, they --
4 they were allowed to use surrogate endpoints.
5 They looked at dystrophin mRNA as an endpoint.
6 So, they didn't look at a clinical endpoint. And
7 when you look at these -- the kids with this type
8 of muscular dystrophy, it did not improve their
9 performance.

10 Q So, the PBM decided to exclude it
11 from all formularies?

12 A I believe so.

13 Q Okay. I won't ask you about
14 SafeGuard Oncology or the AUM. We've talked
15 about that with others.

16 The CBA wanted to talk about
17 orphaned drugs and particularly Strensiq.

18 Do you see that?

19 A Let's see, where? At the --

20 Q Bottom.

21 A Oh, yes. Okay.

22 Q Is it right that that drug was
23 2 million a year?

24 A Yes, and I'm blanking on what Strensiq
25 treats, but I remember -- yes.

1 Q And is that a covered drug?

2 A Strensiq was a covered product.

3 Q Is there any competitor to it?

4 A I would have to look it up to -- I don't
5 remember off the top of my head.

6 Q Okay. Obviously, the coalition --
7 the buying coalition was concerned about it,
8 right?

9 A They're concerned about expensive drugs.

10 Q On bullet point 4, What is ESI
11 doing about high-cost meds?

12 Do you see that?

13 A Yep.

14 Q "Not sure if this is Dr. Miller or
15 someone else."

16 Was it you?

17 MR. FORST: Objection to the form.

18 BY MR. HAVILAND:

19 Q Do you know if you spoke to the CBA
20 about high-cost drugs after 60 Minutes?

21 A I speak about high-cost drugs in almost
22 every presentation.

23 Q Well, specifically, because I --
24 you know, this case brought by the City of
25 Rockford is on behalf of payers. Some of the

1 members of these buying groups may be in the
2 Class, and so I'd like to know if you spoke to
3 members of the Class about the 60 Minutes piece;
4 and then, specifically, what ESI is doing about
5 high-cost medications in light of the 60 Minutes
6 piece?

7 A Yeah, so --

8 MR. FORST: Objection to the -- let
9 me just object to the buildup to that
10 question.

11 (Reporter clarification.)

12 MR. FORST: Object to the -- the
13 form of the question. You can just mark
14 that down, Alexis, thank you.

15 THE DEPONENT: So, I've been
16 speaking about the problem of high-cost
17 drugs for my entire career with
18 Express Scripts. 60 Minutes did not
19 change that. I continue to speak about
20 the high cost of medications and
21 strategies we have either put in place, or
22 tried to put in place, or have
23 contemplated, but I cannot tell you
24 specifically what my talk was at this
25 meeting.

1 BY MR. HAVILAND:

2 Q And you don't recall if you
3 specifically spoke about the 60 Minutes piece and
4 how it painted ESI poorly in relation to Acthar;
5 is that correct?

6 A Correct.

7 Q A few weeks after the 60 Minutes
8 piece -- and we've touched on this a little bit,
9 I want to make sure my understanding is correct.
10 I'm going to go ahead and mark as Exhibit -- I
11 think we're up to 27; is that right?

12 A Correct.

13 Q Thank you. I have such pile in
14 front of me.

15 Miller 27 is previously
16 Henry Exhibit 10, sir.

17 (Exhibit 27 was marked.)

18 (Discussion held off the record.)

19 BY MR. HAVILAND:

20 Q ExpressScripts Exhibit Number [sic]
21 1096837 through 6841. I understand Jason Dohm --
22 is that how you pronounce it, D-o-h-m?

23 A Yes, that's correct.

24 Q He's within Andy's group beneath
25 you, correct?

1 A I don't believe so. I think Jason may
2 have been on the VAC committee --

3 Q Okay.

4 A -- within -- it's --

5 (Reporter clarification.)

6 MR. HAVILAND: VAC.

7 THE DEPONENT: Dohm, on the VAC,
8 V-A-C, committee, which was in the supply
9 chain group.

10 BY MR. HAVILAND:

11 Q Okay. That's over in Mr. Neville's
12 group at this time, right?

13 A That'd be correct.

14 Q All right. Let's go to the
15 beginning of the email, which is -- the substance
16 is at 6840. There's an email from
17 Scott McCutcheon, Friday, May 11, 2018, which is
18 the Friday after the 60 Minutes piece.

19 Do you have that?

20 A Yes.

21 Q Acthar discussion, and it looks
22 like there's a WebEx meeting.

23 Do you recall getting into a WebEx
24 meeting after 60 Minutes to talk about coming up
25 with a strategy so more clients could have a

1 prior authorization?

2 A No.

3 Q Okay. Do you see what I just read
4 there, Leadership has asked we come up with an
5 Acthar strategy, so more clients have the PA. We
6 need to determine if we can add to a PA list or
7 package and the implications and operational
8 challenges; do you see that?

9 A Yes.

10 Q If you turn the page, and if you
11 can go to, sir, Scott McCutcheon's next email,
12 May 11, at 2:16. So, it's the same day. It's
13 about an hour after the -- the WebEx was set to
14 end.

15 Do you have that email at 2:8- --
16 2:16?

17 A Yes.

18 Q He talks about who's attending, but
19 then embedded in there is an email from
20 Glen Stettin from the day before, May 10, 2018.

21 Do you have that on page 6839?

22 A Yes.

23 Q Mr. Stettin says, Thank you
24 Snezana.

25 And who is Snezana Mahon?

1 A Snezana Mahon is someone who worked in
2 Glen's shop for product development.

3 Q David Queller?

4 A He was the head of sales and account
5 management.

6 Q He's the SAM head?

7 A Yes.

8 Q All right. So, Mr. Stettin writes
9 back to those two individuals, Here is what I'd
10 like to do next -- are you with me?

11 A Yes.

12 Q -- add Acthar to all UM bundles --
13 that's utilization management, right?

14 A Yes.

15 Q -- so that it is automatically
16 included in all the clients who participate with
17 us.

18 And then if you skip down to
19 bullet three?

20 A Yes.

21 Q "I have discussed with Brian Seiz
22 and Dr. Steve" -- that would be you?

23 A Correct.

24 Q -- "both of whom concur with this
25 approach."

1 Do you see that?

2 A Yes.

3 Q And did you concur with the
4 approach that was reflected as a leadership
5 decision to add Acthar to all UM bundles for
6 participating clients with Express Scripts?

7 A I believe I did.

8 Q All right. And was it done, sir?

9 A I do not know.

10 Q Who would know that?

11 A Probably Dr. Stettin.

12 Q Dr. Stettin. What is the name of
13 his group again?

14 A Glen was over innovation something -- I
15 can't remember his -- he was the senior VP for
16 innovation, I think.

17 Q Is he still with the company?

18 A Yes, he is.

19 Q What's his title today?

20 Functionally, what does he do?

21 A Probably -- I believe pretty much the same
22 thing still.

23 Q Okay. So, you concurred in the
24 decision that's reflected as a leadership
25 decision to add an Acthar PA to all utilization

1 management for contracted clients, right?

2 A To all those who accept the bundles.

3 Q Right. You know, though, that
4 utilization management does not automatically
5 include an Acthar prior authorization?

6 A Correct.

7 Q It's an adjunct that payers have to
8 pay separately for?

9 A So, plan sponsors choose how much
10 utilization management they want for their plans,
11 and we try to do our best to accommodate their
12 needs.

13 Q Well, Express Scripts offers this
14 utilization bundle, right?

15 A Correct.

16 Q And then it offers these a la carte
17 pieces to add into the bundle, right?

18 A Correct.

19 Q And one a la carte piece is a -- an
20 adjunct prior authorization that includes Acthar?

21 A Correct.

22 Q And you would agree that plan
23 sponsors don't have the ability to understand all
24 that Express Scripts understands about
25 prescription drugs?

1 MR. FORST: Objection to the form,
2 calls for speculation.

3 THE DEPONENT: So, our clients vary
4 in their sophistication when it comes to
5 what they desire, and we don't completely
6 understand their business like they
7 understand their own business.

8 So, when they're trying to achieve
9 their objectives for their employees, we
10 try to be flexible and help them the best
11 way we can.

12 BY MR. HAVILAND:

13 Q You would agree that the health
14 plan clients of Express Scripts rely upon Express
15 Scripts' advice in deciding what drugs to cover,
16 and if covered, how to treat them, whether --

17 A Yeah, health --

18 Q I'm sorry -- whether with
19 utilization management or otherwise, right?

20 MR. FORST: Objection to the form,
21 calls for speculation.

22 THE DEPONENT: So, you're talking
23 about health plans or commercial clients,
24 or --

25 BY MR. HAVILAND:

1 Q Well, that's a fair point. So, I'm
2 talking about health plans. Obviously, you've
3 got Home Depot, You've got major corporations.
4 We saw an email the other day --

5 A Yep.

6 Q -- that Sanofi is a client. That's
7 a drug company.

8 A Yeah, no, we've identified that we
9 represent many of the drug companies.

10 Q Yeah, yeah. And they actually had
11 an Acthar spend and contacted Express Scripts and
12 complained about it, but you've got a big drug
13 company that obviously understands pharma.
14 They're a drug company.

15 But then you have smaller plans,
16 like the City of Rockford, right?

17 A Um-hmm.

18 Q Yes?

19 A Yes.

20 Q And smaller plans, like the City of
21 Rockford, don't have the resources or knowledge
22 that Express Scripts does about prescription
23 drugs, you'd agree?

24 A Generally --

25 MR. FORST: Objection.

1 THE DEPONENT: Generally, yes.

2 BY MR. HAVILAND:

3 Q And one of the reasons why small
4 plans, like the City of Rockford, go to
5 Express Scripts is for its expertise?

6 MR. FORST: Objection to the form,
7 calls for speculation.

8 THE DEPONENT: I -- I assume so,
9 correct.

10 BY MR. HAVILAND:

11 Q And small plans like that would
12 rely upon, generally, Express Scripts' expertise
13 and recommendations in deciding the formulary
14 composition and whether or not to have
15 utilization management?

16 A So, we -- we counsel all these plans on
17 what we believe is in the their best interests.

18 Q And according to what was happening
19 after 60 Minutes, there was some portion of the
20 clients that did not have a prior authorization
21 in place for Acthar, right?

22 A That's correct.

23 Q And leadership decided to just
24 include it in all the UM bundles and not have it
25 be an a la carte purchase, correct?

1 A Correct.

2 Q And that would be a benefit to
3 plans?

4 A It may be a benefit to plans. Plans --

5 Q Well, they're getting something for
6 free, right, they're getting the PA without
7 having to pay the adjunct charge of it, right?

8 A The plans choose what they want to do
9 based on their own philosophy. So, some plans
10 want no disruption. They're willing to pay for
11 high-priced drugs, because they'd rather have
12 their members being able to access anything
13 they'd like.

14 There are other plans that,
15 whatever utilization management tool we have,
16 because financially they can't afford to have any
17 excess spend. And so, it -- it's very dependent
18 on a plan's own philosophy.

19 Q Well, let's focus on the issue at
20 hand, and that is the decision by leadership, in
21 which you concurred, to make a prior
22 authorization available to all contracted
23 clients.

24 In the email that we're reading
25 from, Mr. McCutcheon's email, he's got a bullet

1 point that says, Concerns?

2 A Um-hmm.

3 Q Do you see that?

4 A Yes.

5 Q Does the proposal and sudden change
6 to add and push out PA, at no charge, make ESI
7 appear to admit -- admitting we were do -- we
8 were wrong?

9 Do you see that?

10 A Yes.

11 Q And that was a concern, because ESI
12 had been charging plans -- and it says later,
13 2 pennies per member per month.

14 Do you see that?

15 A Yes.

16 Q And that's how Express Scripts
17 looks at these things when it tells clients, It's
18 going to cost 2 cents per member, per month to
19 have this prior authorization, right?

20 A Correct.

21 Q And those pennies, small, become
22 billions of dollars to Express Scripts, right?

23 A I -- I -- I don't know the math there.

24 Q Well, you know Express Scripts
25 makes over \$100 billion?

1 A \$100 billion?

2 Q Yes, sir.

3 A I do not know that.

4 Q You don't know it is the largest --
5 20th largest company in America?

6 A I do not know we make \$100 billion.

7 Q Well --

8 A Are you talking about revenue, or are you
9 talking about --

10 Q I'm talking about, when you look at
11 Fortune 500 companies, that Express Scripts was
12 the 20th largest corporation in America in 2018.

13 Does that surprise you?

14 A No, that part doesn't surprise me at all.

15 Q Okay. So -- and it's \$100 billion
16 in revenue, sir. \$100 billion.

17 MR. FORST: That's not -- not a
18 question.

19 THE DEPONENT: It's --

20 MR. FORST: Just wait for a
21 question.

22 THE DEPONENT: All right.

23 BY MR. HAVILAND:

24 Q You're not surprised to know that
25 the company you work for is the 20th largest in

1 America?

2 A Correct.

3 Q All right. And the way it makes
4 that money is through these services fees and --
5 and other ways that we won't get into, it makes
6 money out of CuraScript, Accredo, and UBC, and
7 we've covered that a little bit, right?

8 MR. FORST: Objection to the form
9 of the question, vague, ambiguous.

10 THE DEPONENT: Yes, we've discussed
11 that.

12 BY MR. HAVILAND:

13 Q Yeah, we saw the \$13 million math.
14 The PBM, however, sir, just so the
15 jury's clear about it, it makes money through the
16 services it provides to the plans; consultation,
17 putting plan designs together, creating
18 formularies, utilization management, and other
19 services, right?

20 A Correct.

21 Q And so, when the ad hoc PA for
22 Acthar, and I'm in the -- under, Considerations,
23 the circle, AUM Package Savings Erosion, ad hoc
24 PA cost equals \$0.02 PM/PM -- and that stands for
25 per member, per month, right?

1 A Correct.

2 Q Because Express Scripts goes to
3 plan clients and says, We look at your spend, in
4 terms of your members, per member, per month,
5 right?

6 MR. FORST: Objection --

7 THE DEPONENT: Correct.

8 MR. FORST: -- to the form.

9 BY MR. HAVILAND:

10 Q And this utilization management
11 tool that you described for us this morning, sir,
12 right?

13 A Um-hmm.

14 Q Remember, you said, direct
15 contracting, and you said, utilization
16 management, and you said, the media, and we've
17 covered -- we've covered the media, and we
18 covered direct contracting.

19 This is utilization management,
20 right?

21 A Correct.

22 Q And prior authorization is a form
23 of utilization management?

24 A Correct.

25 Q It's not free?

1 A Correct.

2 Q Express Scripts charges plan
3 clients for that service, right?

4 A Correct.

5 Q And in this case, the ad -- the ad
6 hoc PA, because it wasn't in general utilization
7 management bundles, was costing plans who elected
8 to have it 2 cents per member, per month, right?

9 A That's what this appears to say.

10 Q Right. But not everybody had that,
11 correct?

12 A Correct.

13 Q And after 60 Minutes, leadership
14 made a decision, in which you concurred, to just
15 give everybody the Acthar PA without any
16 additional cost; isn't that correct?

17 A What I concurred with was adding it to the
18 bundle, correct.

19 Q Right. And that pushed out the
20 Acthar PA to every plan contracted with
21 Express Scripts for utilization management,
22 correct?

23 A I don't think that's correct.

24 Q What's wrong about that?

25 A People still have to opt into the bundles.

1 Not everyone takes the bundles.

2 Q No, I thought I put it in my
3 question -- I appreciate the clarification -- if
4 a plan had the bundle, but didn't have the ad hoc
5 PA, leadership said, Give it to everybody who has
6 the bundle?

7 A Correct.

8 Q And that was a substantial quantity
9 of people that didn't have the Acthar PA?

10 A I --

11 MR. FORST: Objection to the form.

12 THE DEPONENT: I don't have -- I
13 can't quantify that for you.

14 BY MR. HAVILAND:

15 Q Well, it was done in the email,
16 sir.

17 A Okay.

18 Q Pulling the value from the
19 adjunctive PA to the limited PA -- and that's
20 just one of the bundles, right?

21 The limited PA is part of the AUM,
22 which is the larger utilization management
23 program --

24 A Um-hmm.

25 Q -- by Express Scripts, right?

1 A Yes.

2 Q Pulling the adjunctive to limited
3 reduces the value of the adjunctive and increases
4 the limited result, so what -- what's happening
5 here is the business folks at the PBM are looking
6 at implementing this decision of leadership to
7 push out the Acthar PA as part of these bundles,
8 and -- and the implication is it's going to
9 lessen the values of other bundles and lessen the
10 value of the adjunct -- they call it the ad hoc
11 PA, right?

12 A Correct.

13 MR. FORST: Objection to the form.

14 BY MR. HAVILAND:

15 Q And it says --

16 MR. FORST: Let me just get in the
17 objection --

18 THE DEPONENT: I'm sorry.

19 MR. FORST: -- between the question
20 and answer.

21 BY MR. HAVILAND:

22 Q It says the result is to, Decrease
23 the value to step up to a more restricted
24 package, right?

25 A Correct.

1 Q Because the general utilization
2 bundle doesn't have all these bells and whistles,
3 right?

4 MR. FORST: Objection to the form.

5 THE DEPONENT: Yeah, I'm not sure
6 characterizing it as bells and whistles
7 is --

8 BY MR. HAVILAND:

9 Q It doesn't have all the prior
10 authorization policies that are out there to deal
11 with high-cost drugs?

12 A Correct.

13 Q Plans have to step up, and there's
14 a chart somewhere that shows a -- a line going
15 up, as you add these different bundles, you're
16 getting more and more prior authorization
17 protection, right?

18 A That is correct.

19 Q But if you move the Acthar prior
20 authorization down into general utilization --
21 utilization, you're enhancing the value of
22 utilization for -- for no additional cost, but
23 you're diluting the value of more restricted
24 prior authorizations up the ladder, right?

25 A Correct.

1 Q So, that's what this is doing, it's
2 looking at that analysis, and there's a bullet
3 here that says, Greater than approximately
4 2 million lives with the Acthar PA.

5 Do you see that?

6 A Yes.

7 Q That -- that's a small portion of
8 the patient population covered by Acthar -- or
9 Express Scripts as a PBM, right?

10 A That is correct.

11 Q And so, the analysis goes on and
12 looks at the implications to Express Scripts of
13 that decision and implementing that decision,
14 you'd agree?

15 A It looks at some of the implications,
16 correct.

17 Q And you would assume, by those that
18 are all copied here, that they were knowledgeable
19 about the subject matter, so that Mr. Stettin
20 could put together a listing of concerns,
21 considerations, results, and timing, right?

22 MR. FORST: Objection to the form.

23 THE DEPONENT: That appears to be
24 what this is about, yes.

25 BY MR. HAVILAND:

1 Q And you weren't brought into those
2 details when they said that Dr. Steve concurred;
3 you were just asked, generally, Do you concur
4 with the idea of giving out this Acthar PA for
5 free?

6 A Correct.

7 Q All right. And you don't know if
8 it was implemented?

9 A Correct.

10 Q So, let's follow the thread. And I
11 realize, sir, you weren't copied on it, but you
12 were mentioned in the thread. So, they did come
13 out to you and -- and get your opinion --

14 A Um-hmm.

15 Q -- and you provided that, yes?

16 A Correct.

17 MR. FORST: Objection -- well,
18 again, objection to the form.

19 MR. HAVILAND: Yeah, I'm sorry, our
20 pace has -- has hopped up a little bit
21 here.

22 BY MR. HAVILAND:

23 Q So, if you go with me to 838,
24 Mr. McCutcheon's May 24, 2018 email.

25 You with me?

1 A Yes.

2 Q To Kelcey Blair and Jason Martin.

3 Do you know who they are?

4 A I know who Kelcey is. I don't believe I
5 know Jason.

6 Q They work for the PBM?

7 A Yes, they do.

8 Q And he's asking, Do we have any
9 updates on progress of research and feasibility
10 of adding an age edit to the PA and tightening
11 criteria?

12 Do you see that?

13 A Yes.

14 Q And there's a question earlier from
15 Katie Kirk about age edits below that.

16 Do you see that?

17 A Yes.

18 Q And if you go to the face page, I
19 want to go to Mr. McCutcheon's email from
20 Thursday at 9:00 a.m.

21 Do you see that? It's in the
22 center.

23 A Yes.

24 Q He says, I'm sitting with Andy at
25 the airport.

1 Do you see that?

2 A Yes.

3 Q That's Andy Behm?

4 A I assume so.

5 Q "P&T has ruled optional, so Andy is
6 recommending blocking and using current PA
7 criteria as exception criteria."

8 I think earlier today, this is what
9 you described about changing the coverage policy
10 for Acthar to make it optional, right?

11 A The -- the bucketing of Acthar to the
12 optional -- that it's an optional product.

13 Q Okay. And that was done, the
14 decision was made with respect to the Medicare
15 formulary, right?

16 A Yeah, I -- I do not know what formulary
17 they're talking about here. So, that would be --
18 have to be addressed with Andy.

19 Q I -- I'll do that, but you do
20 recall that it was done in the context of the
21 Medicare formulary?

22 A Yes.

23 Q And you described, because they all
24 have babies that are covered under Medicare,
25 right?

1 A Right.

2 Q If you look above that,
3 Kelcey Blair says, If P&T has changed their
4 parameter, Jason, I assume this would go back to
5 VAC. He says, Yes, we'll be reviewing during our
6 annual review.

7 You told me what the VAC was. I
8 appreciate that, because I didn't know what that
9 reference was.

10 That is the -- the cost arm that
11 evaluates a cost element of a decision,
12 independent from the P&T?

13 A Correct.

14 Q All right. And so, they would look
15 at that decision -- that coverage decision and do
16 their cost analysis?

17 A It's not a cost analysis of what a -- the
18 functions of Express Scripts. They do a value
19 assessment of the product.

20 Q What I'm trying to understand is,
21 you know, Acthar is such an old medication, and
22 the value assessment was done a long time ago in
23 terms of coverage.

24 A It's reviewed annually.

25 Q Okay. All drugs are reviewed

1 annually?

2 A I believe so.

3 Q Okay. So, if there's a change in
4 coverage criteria, even for the government, that
5 would go back to VAC. And he -- and she says,
6 Jason says it will be done on the annual review,
7 right?

8 A Yes.

9 Q And that's how you understand that
10 works?

11 A Yes.

12 Q And do you know, if, in fact -- so,
13 we know that P&T ruled optional in Medicare,
14 right?

15 A That's correct.

16 Q You don't know if the P&T Committee
17 ruled optional in the commercial plans, right?

18 A Or any other formulary.

19 Q You don't know that?

20 A Correct.

21 Q All right. The email from
22 Scott McCutcheon says, Andy is recommending
23 blocking.

24 What -- what is that referring to?

25 MR. FORST: Objection, calls for

1 speculation.

2 THE DEPONENT: So, when you move a
3 drug from include to optional, you still
4 want to make sure you're controlling
5 utilization. So, that's where you may
6 want to make sure that there's a PA, for
7 instance, that only people with infantile
8 spasm or MS exacerbations are getting the
9 drug.

10 BY MR. HAVILAND:

11 Q And that is done as an edit at the
12 pharmacy level, right?

13 A That is done -- so, prior authorization is
14 done at the pharmacy level.

15 Q Yes. For a pill dispensed at the
16 pharmacy, that'd actually pop up on the screen
17 for the pharmacy that there was some edit there
18 that -- something more that needs to be done
19 before the script gets filled?

20 A That's correct.

21 Q In the specialty arena, it's done
22 through a more convoluted process, through prior
23 authorization review, clinical review, and the
24 like, right?

25 A That's correct.

1 Q Similar, but different type of
2 pharmacy operation, right?

3 A Correct.

4 Q And so, in the specialty pharmacy
5 arena, would you still have a block and then a
6 review to see if it would be allowed as optional?

7 A I would have to defer to people who are
8 more expert.

9 Q Okay. You don't know how --
10 functionally how that works. Okay.

11 And -- and I do want to make sure
12 I'm asking all you know. I'll tell you what, I
13 have a couple of other emails where you're
14 involved with Andy --

15 A Um-hmm.

16 Q -- so let's go through those, and
17 then I'll make sure I've gotten what I can get on
18 this subject for what you know.

19 So, we're up to number 28.

20 (Exhibit 28 is marked.)

21 BY MR. HAVILAND:

22 Q This is Exhibit 28. I don't know
23 why this doesn't have Bates numbers on it. It
24 was a -- it comes from the Express Scripts
25 production.

1 MR. HAVILAND: For those on the
2 Zoom, it doesn't have Bates numbers on it.

3 BY MR. HAVILAND:

4 Q It is an email thread between
5 Andy Behm and Dr. Miller, dated May 21, 2018.
6 So, it's a couple of days before the Jason Dohm
7 thread of the 24th and the leadership decision
8 that was made May 11. So, we're -- we're in that
9 window, Doctor. You'll see Mr. Behm writes, P&T
10 decision from last week, see below.

11 Do you see that?

12 A Yes.

13 Q And the email -- what's embedded in
14 the email says, Proprietary and confidential, do
15 not distribute.

16 You had access to P&T decisions,
17 right?

18 A Yes.

19 Q As the clinical head?

20 A Um-hmm.

21 Q Yes?

22 A Yes.

23 Q Obviously, Mr. Behm did, because he
24 ran the group that monitored the P&T inside
25 Express Scripts, right?

1 A Correct.

2 Q Do you know who else got
3 dissemination of this type of information from
4 P&T?

5 A I don't -- you'd have to ask Andy. I
6 can't give you the -- what their distribution is.

7 Q Okay. He doesn't make direct
8 reference to the subject we're talking about here
9 with Acthar, but if you go into the email, he
10 says, Here are the parameters established at the
11 May 27, 2018 ESI National P&T Committee Meeting.

12 And that's -- is it always a
13 national meeting?

14 A ESI National P&T is. So, there's more
15 than one P&T. A subgroup of the national P&T is
16 the Medicare P&T.

17 Q Okay. And then is there one for
18 commercial?

19 A The national P&T is for overseas
20 commercial.

21 Q I see. Government's a subset?

22 A Medicare's a subset.

23 Q Under the bottom, it says, Existing
24 medications, Acthar changed from include to
25 optional.

1 And that's what you described for
2 us, right?

3 A Correct.

4 Q And so, just so we can nail this
5 down, sir, does this pinpoint in your mind that
6 that decision to change to optional was done at
7 this national meeting, May 17, 2018, and you
8 learned about the decision through this email
9 from Andy Behm?

10 A That would be correct.

11 Q All right. Now, I want to --

12 A But, again, just to be clear, I don't know
13 if this is pertaining to the Medicare formulary
14 or the commercial formularies.

15 Q Yeah, and I don't have anything
16 further --

17 A Yep.

18 Q -- to show you, sir, that you're
19 on.

20 A Right.

21 Q I believe we have your emails --
22 entire from this time, but I -- that's all I
23 have, so --

24 A Yep.

25 Q -- if you don't remember, that's

1 all I can add.

2 A Yep.

3 Q All right. I do have one more
4 subject from this time period I want to ask you
5 about. It's just after 60 Minutes, but it
6 relates to a different subject matter.

7 I'm going to mark this as
8 Exhibit 29.

9 (Exhibit 29 was marked.)

10 BY MR. HAVILAND:

11 Q It was previously marked as
12 Henry Exhibit 9. Exhibit Miller 29 is
13 ExpressScripts4848402 through 8406.

14 Just to orient ourselves, we looked
15 at some of these emails earlier, sir. If you go
16 to 8406, you'll see the CBS News piece about
17 60 Minutes. And then you'll come forward, you'll
18 see some of the Brian Henry emails, somewhat
19 redacted.

20 I just want to bring you forward to
21 the second page at 8403, there's a new email that
22 picks ups after Brian Henry's email from the
23 night of 60 Minutes. Adam Kautzner to
24 Jason Dohm, Not sure what we are doing on rates.

25 And then right above there, there's

1 an email from Mr. Dohm that says, Is there -- is
2 this an opportunity to obtain a better rate from
3 Mallinckrodt?

4 Do you see that?

5 A Yes.

6 Q And I asked you, was there ever an
7 opportunity taken to talk to Mallinckrodt about
8 rates?

9 And I want to see if you -- this
10 helps to refresh your recollection about a
11 subject you know. If not, that's fine.

12 Jason Dohm -- so, Mr. Henry thought
13 there was a time when he was in your group under
14 Mr. Behm, but then he was also in pharma
15 contracting at one point.

16 Do you know where he was at this
17 time?

18 A This would be -- he would be in supply
19 chain at this time.

20 Q Under Mr. Neville, yes?

21 A Yes.

22 Q How about Michael Rothrock?

23 A I believe he is also in supply chain.

24 Q And Jeffrey Todd [sic]?

25 A Same.

1 Q Todd Jeffrey.

2 All right. So, then his question
3 goes to -- from Michael Rothrock to Todd Jeffrey,
4 You and Tom may want to discuss if this opens up
5 any additional rebates options on Acthar Gel.

6 Dohm then asks, What other drugs
7 does Mallinckrodt manufacture? Can we apply
8 pressure to their other product line?

9 Todd Jeffrey says, Acthar is the
10 only rebated product -- product under contract.
11 Tom -- I think that's Tom Abson -- Any other
12 intel here?

13 And then Mr. Dohm says, I will
14 determine if they have any non-contracted drugs
15 we could exclude.

16 Do you see that?

17 A Yes.

18 Q We touched upon this, but I wanted
19 to make sure I understood your understanding
20 about it.

21 One way that the PBM can control
22 costs and reduce costs with a manufacturer is by
23 looking at its book of drugs and saying, We're
24 going to treat this particular drug one way and
25 another drug a different way under formulary

1 controls and otherwise, right?

2 A Yes.

3 Q Mallinckrodt doesn't just make
4 Acthar, right?

5 A Correct.

6 Q In fact, Mallinckrodt was -- maybe
7 still is -- the largest manufacturer of generic
8 opioids; did you know that?

9 A I knew they made generic opioids.

10 Q They've since settled, and they've
11 gone through bankruptcy, and all sorts of things.

12 But when the folks in this thread
13 are talking about, Can Express Scripts apply
14 pressure to their other product line, they would
15 be looking at products other than Acthar in terms
16 of bringing pressure to the manufacturer to do
17 something on rates for Acthar, right?

18 A The job -- their job is, each and every
19 day, to look to see how they can lower drug
20 prices, and this would be one mechanism by which
21 they could lower drug prices, or potentially.

22 Q And do you know if, in fact, the
23 folks in this group ever went to Mallinckrodt --
24 hold on -- after 60 Minutes and applied pressure
25 through their other product lines, either opioids

1 or some of their other branded products, in order
2 to extract pricing concessions for Acthar?

3 A And as I've stated before, I do not.

4 Q Okay. It's fair to ask, because
5 this is right in the wheelhouse where you are
6 copied on some emails, but -- and did you know at
7 the time that Acthar was a rebated product?

8 A I do not know the financial relationships
9 with these drugs.

10 Q Okay. Do you know when the rebate
11 came about?

12 A Again --

13 MR. FORST: Objection, asked and
14 answered.

15 THE DEPONENT: -- I do not know.

16 BY MR. HAVILAND:

17 Q Well, let me show you a document,
18 and see if we -- there's something more to talk
19 about.

20 (Discussion held off the record.)

21 BY MR. HAVILAND:

22 Q All right. You are familiar,
23 though, sir, that Express Scripts has a Preferred
24 Savings Grid Rebate Program; are you not?

25 A Yes.

1 Q And that's one way the PBM
2 contracts with pharma to get financial value back
3 for its plans, right?

4 A Correct.

5 Q Through rebates?

6 A Correct.

7 Q Okay. And just so the jury's
8 clear, that's different from the price being
9 charged; the price charged is the price charged;
10 whether it's discounted or not, we can leave
11 aside.

12 A rebate is money that comes back
13 later after the expenditure's been made, right?

14 A That's correct.

15 Q Okay. I -- I just don't want to
16 assume that they understand what we're talking
17 about.

18 And so this Preferred Savings Grid
19 is a program that's offered to a whole host of
20 pharma companies to participate with Express
21 Scripts and provide rebates for their products,
22 right?

23 A That is correct.

24 Q And some or all of those rebates
25 might be passed on to the plans, but that's a

1 different issue?

2 A That's correct.

3 Q Okay. Let me mark, as Exhibit 30
4 to your deposition, an amendment to a rebate
5 contract between Mallinckrodt and Express
6 Scripts, and it's signed by Adam [sic] Adamcik,
7 who was the vice president of pharma strategy and
8 contracting at the time.

9 (Exhibit 30 was marked.)

10 BY MR. HAVILAND:

11 Q Take a moment and see if you've
12 seen that before today. If you haven't, that's
13 fine. I'm going to ask you a question.

14 A Never seen it.

15 Q And you don't get involved in -- in
16 pharma contracting, reviewing contracts, right?

17 A No, sir.

18 Q Mr. Adamcik, that's his role?

19 A That's correct.

20 Q He's a direct report to
21 Mr. Wentworth at this time?

22 A That is -- I believe he's a direct report
23 to Everett Neville at this time.

24 Q I see. Because there's a point
25 where Neville came in and then reported -- he had

1 folks reporting up to him before it went up to
2 Mr. Wentworth, right?

3 A So, Ed is -- this is a group within supply
4 chain.

5 Q I see. Okay. I didn't know that.
6 The contracting group was part of
7 supply chain; is that right?

8 A I believe so, unless specialty -- yeah, I
9 mean, this is Express Scripts, so this would be
10 part of supply chain.

11 Q Okay. This is an amendment to
12 another agreement I'm not going to show you. I
13 wanted to show you the amendment, because it's --
14 it relates to the issue we're talking about. If
15 you'll turn to page 2 of it, you'll see that
16 it -- it only relates to Acthar.

17 Do you see that? It is really hard
18 to read. Do you see the rebate program
19 commercial?

20 A Yes.

21 MR. FORST: Okay. I'm just -- I'm
22 just going to lodge a standing objection,
23 foundation.

24 MR. HAVILAND: You can have it.

25 For the record, I'm sorry, this

1 is -- Exhibit 30 is ExpressScripts0000434
2 through 449. This is a contract that was
3 produced by Express Scripts very early on
4 in the case. It's Number 400.

5 BY MR. HAVILAND:

6 Q Do you see how, on page 2, it's
7 relating to Acthar?

8 A Yes.

9 Q And the exhibit -- Attachment A-2
10 to Exhibit A has an HP Acthar Gel Model Policy.

11 Do you see that reference --

12 A Exhibit --

13 Q -- at page 3 of the document?

14 A Yes.

15 Q And then if you turn with me, sir,
16 there is a statement that says, HP Acthar Gel
17 Model Policy Language Guidance.

18 Do you have that? It's at
19 Bates number 437.

20 A Yes, sir.

21 Q Okay. And then this -- this policy
22 goes on through the end of the document, all the
23 way through to 449. I only want to focus on the
24 couple of lines with you.

25 You see that the model policy

1 language in the first full paragraph says, Acthar
2 is approved by the US Food and Drug
3 Administration for 19 indications; do you see
4 that?

5 A Yes.

6 Q We talked this morning. That --
7 that's not accurate, right, it's approved for two
8 indications?

9 A That's -- you're correct.

10 Q And then if you skip down, it says,
11 Please note that this model policy includes a
12 whole bunch of things, in terms of therapies and
13 so on.

14 I just want to get to the third
15 page, which says -- at 438, and then it -- it
16 goes through the various indications and uses.
17 If you go to the top, it's page 2, it says,
18 Effective date, HP Acthar Gel, Acthar, is
19 approved by the FDA and is a covered therapy for
20 the following indications and uses.

21 You with me?

22 A Yes.

23 Q And then it lists infantile spasms,
24 right?

25 A Yes.

1 Q Acute exacerbations of MS?

2 A Yes.

3 Q And -- and we agree that they are
4 FDA-approved indications, right?

5 A Um-hmm.

6 Q Yes?

7 A Yes.

8 Q And then proteinuria and nephrotic
9 syndrome; did I say that correctly?

10 A Proteinuria and nephrotic syndrome,
11 correct.

12 Q That is not an approved --
13 FDA-approved indication for Acthar, correct?

14 A Correct.

15 Q And then on the next page,
16 dermatomyositis/polymyositis, I think that's
17 DM/PM, right?

18 I like the shorthands better,
19 but -- I can't pronounce these, but what -- what
20 is that disease?

21 A So, these are -- myositis is inflammation
22 of the muscles, and so this is dermatomyositis.
23 It's skin and muscle inflammation; or
24 polymyositis is when there's multiple muscles
25 that are inflamed.

1 Q Okay. And Acthar is not approved
2 by the FDA for that disease, correct?

3 A Correct.

4 Q Rheumatoid arthritis, or RA I like
5 to call it, Acthar is not approved for that
6 either?

7 A Correct.

8 Q Systemic lupus, Acthar is not
9 approved for that?

10 A Correct.

11 Q Ophthalmic -- eye -- eye
12 conditions, right?

13 A Correct.

14 Q Acthar is not approved for that?

15 A Correct.

16 Q Sarcoidosis, is that correct?

17 A Sarcoidosis, yes.

18 Q I'm getting there.

19 A Yep.

20 Q I don't even play a doctor on TV.

21 Sarcoidosis is a -- that's not
22 approved for Acthar, right?

23 A Correct.

24 Q And then the rest.

25 And -- and, sir, did anybody come

1 to you and ask your opinion about whether or not
2 the PBM should be requiring plans to cover a host
3 of nonFDA-approved indications for Acthar as a
4 condition for getting a rebate?

5 MR. FORST: Objection to the form.

6 THE DEPONENT: This is totally
7 outside my area. I don't know the
8 relevance of the document or the -- these
9 are contracts that are better, you know --
10 these questions better suited for the
11 teams that make these contracts.

12 BY MR. HAVILAND:

13 Q And I -- I'm going to have an
14 opportunity --

15 A Yep.

16 Q -- with Mr. Adamcik and some
17 others. I just want to make clear, because
18 you're the chief medical officer --

19 A Correct.

20 Q -- you understand the medicine,
21 right?

22 A Correct.

23 Q There was some issue yesterday.
24 Is there anyone above you in the
25 hierarchy of Express Scripts, and I'm just going

1 back to pre-Cigna, that -- that understands the
2 clinical medical aspects of the drugs better than
3 you?

4 A So, I think I would be arrogant for me to
5 say I understand the clinical evidence --

6 Q That's fair.

7 A -- of the drugs better than anyone.

8 Q But --

9 A But there is -- but I report to
10 Mr. Wentworth, and Mr. Wentworth --

11 Q Yeah.

12 A -- has less understanding than me, so...

13 Q Fair enough. He'd looked to you
14 for that type of information, right?

15 A Correct.

16 Q All right. And when the company
17 had you go out and speak about these issues, the
18 company recognized that you knew what you were
19 talking about?

20 A Hopefully.

21 MR. FORST: Objection to the form.

22 MR. HAVILAND: Okay. Let's take a
23 break, and I'm going to go through this
24 stack, which I didn't get to do at lunch,
25 and try to get it down to something that I

1 can get through, and then we're going to
2 finish up at the next break, okay?

3 MR. FORST: Okay.

4 MR. HAVILAND: Thank you.

5 THE VIDEOGRAPHER: We are going off
6 the record at 3:22 p.m.

7 (Break taken.)

8 THE VIDEOGRAPHER: We are back on
9 the record at 3:40 p.m.

10 BY MR. HAVILAND:

11 Q So, Dr. Miller, I have no further
12 questions. I have a bunch of subjects that I --
13 I might have covered with you, but I do want to
14 ask you before we break.

15 You're still employed as a
16 consultant, right?

17 A To Cigna, yes.

18 Q And do you have an expectation
19 you'll continue as a consultant through this
20 year?

21 A I believe I'll be -- my contract is
22 through December 31st.

23 Q Okay. So, you have a contractual
24 obligation. And do you expect after that, you'll
25 be done?

1 A Most likely.

2 Q Okay. I don't want your personal
3 address. I know you put your business address.

4 What -- what city and state do you
5 live in, sir?

6 A I live here in St. Louis.

7 Q You live in St. Louis. Okay.

8 And you've lived there for a while?

9 A 30 some odd years, yes.

10 Q No expectation of moving?

11 A No.

12 Q Okay. Well, with that, I have no
13 further questions, and I appreciate your time
14 today.

15 A Thank you very much.

16 Q I said I would try to be judicious,
17 and --

18 A Yep.

19 Q -- I know at times we weren't, but
20 we've gotten to good place.

21 MR. HAVILAND: So, I would ask
22 that, if Counsel has questions following
23 my examination, we close the Rockford
24 record, and then I would tender the
25 witness.

1 MR. FORST: No questions.

2 MR. HAVILAND: Okay. Anna, you're
3 up.

4 MS. HIGGINS: Dr. Miller, good
5 afternoon. I will make this quick.

6 Actually, I'm going to send these
7 exhibits to Matt real quick. I just got
8 his email. One second. I'm sorry, I
9 apologize, it's a little clunky by Zoom,
10 but I will make this as quick as possible,
11 so that you can get out of here.

12 EXAMINATION

13 BY MS. HIGGINS:

14 Q So, I just have a few follow-up
15 questions to what Mr. Haviland asked,
16 specifically kind of to just try to nail down
17 some -- some timelines based on what you've
18 already testified to.

19 So, I'm going to pull up --
20 actually, let me go ahead and do this. So,
21 earlier, do you recall that you testified that
22 you met with Dr. Steve Romano from Mallinckrodt?
23 Do you recall testifying to that?

24 A Yes.

25 Q Okay. And you -- do you recall

1 testifying that you may have spoken to him on the
2 phone at some point in time?

3 A Yes.

4 Q Okay. So, I'm going to mark as
5 Exhibit 31 ExpressScripts0515829. I'll screen
6 share it with you.

7 (Exhibit 31 was marked.)

8 MR. HAVILAND: Anna -- Anna, I just
9 added the reporter to my reply, so if you
10 want to use that thread, it will take care
11 of one extra step.

12 MS. HIGGINS: I'm sorry, sorry.
13 The sound quality is a little rough.

14 MR. HAVILAND: I just put Alexis on
15 my email, so you have the court reporter.

16 MS. HIGGINS: Thank you. Okay.
17 Sorry.

18 BY MS. HIGGINS:

19 Q Dr. Miller, can you see my screen?
20 Do you see an email?

21 A Yes.

22 Q Okay. So, this is an email, we're
23 going to start at the bottom here and scroll down
24 to the bottom. It's an email from Steven Romano
25 to you, dated November 20th, 2015. And I'm just

1 going to read quickly from the second paragraph
2 here.

3 It says, My understanding is that
4 you have some questions regarding several of our
5 products, including Acthar, and this was an
6 opportunity for us to consider how best
7 Mallinckrodt could address those questions or
8 concerns. I was hoping to get a sense -- better
9 sense of any specific product issues, so we could
10 then address in a small face-to-face meeting with
11 me and perhaps several of my scientists and
12 clinicians. Given the proximities of our
13 company's headquarters, that could likely be
14 easily accommodated by both sides.

15 Dr. Miller, does this refresh your
16 memory about the timing of when you may have met
17 with Dr. Romano?

18 A This would be -- this would probably help
19 my memory, yes.

20 Q Okay. So, you believe that your
21 meeting with Dr. Romano would have been after
22 November 20th, 2015?

23 A That would probably be correct, yes.

24 Q Okay. And in this email, it says
25 that you -- he was -- he was made aware that you

1 may have some questions regarding several of
2 their products, including Acthar.

3 Do you have any recollection of
4 what your questions would have been?

5 A I think -- I think this was his kind way,
6 but you'd have to ask him, of asking why I think
7 their drug isn't very good.

8 Q Okay. All right. Moving on. Oh,
9 I'm sorry, let me go back to this for a second.
10 Okay.

11 And earlier, Dr. Miller, you
12 testified that Acthar was changed from clinical
13 include to clinical optional at some point; is
14 that right?

15 A On the -- that I'm aware of, on the
16 Medicare formulary.

17 Q Medicare formulary. Okay.

18 And Mr. Haviland showed you a few
19 exhibits, specifically Exhibit 27 and 28, that
20 indicated it was changed in -- to optional in
21 2018.

22 Do you recall that?

23 A I believe I -- I saw those exhibits. I
24 don't know if that is when it was made optional
25 in the Medicare formulary or if it's subsequently

1 been made optional in other formularies.

2 Q Okay. Thank you. I'm going to
3 mark, as Exhibit 32, ExpressScripts0975522.

4 Dr. Miller, can you see this email
5 from Andrew Behm --

6 A Yep.

7 Q -- to David Whitrap?

8 A Yes.

9 (Exhibit 32 was marked.)

10 BY MR. HAVILAND:

11 Q Okay. It's dated November 9th,
12 2015. And if you look at the second paragraph,
13 it says, On the Medicare Part D side, again,
14 confidentially, we flipped Acthar to optional
15 status approximately two years ago.

16 So, based on this email, would that
17 indicate that the Medicare status was flipped to
18 optional in 2013?

19 A That's -- that is possible.

20 Q Okay. I think I only have one more
21 question for you. Previously, you discussed with
22 Mr. Haviland, in 2018, that Express Scripts
23 wanted to add the Acthar prior authorization to
24 the UM bundles.

25 Does that -- do you recall that?

1 A I recall that discussion, yes.

2 Q Okay. Do you know if that was
3 applied to the Medicare plans as well, or was it
4 only for commercial?

5 A I can't give you -- I don't know the
6 specifics.

7 MS. HIGGINS: Okay. Thank you.

8 Those are -- that's all my questions.

9 THE DEPONENT: Thank you.

10 MR. HAVILAND: Okay. Dr. Miller,
11 you're done.

12 MR. FORST: Yeah, no more -- no
13 questions from us.

14 THE VIDEOGRAPHER: We are going
15 off -- we are going off the record at
16 3:47 p.m.

17 MR. HAMANN: We would like
18 definitely the rough and the standing
19 order.

20 (Deposition recessed at 3:51 p.m.)

21 - - - -

22

23

24

25

1 C E R T I F I C A T E

2

3 I, Alexis A. Jensen, RPR, CRR, a
4 Certified Shorthand Reporter, do hereby certify
5 that prior to the commencement of the
6 examination, DR. STEVEN MILLER was duly sworn by
7 me to testify to the truth, the whole truth, and
8 nothing but the truth.

9 I DO FURTHER CERTIFY that the foregoing
10 is a true and accurate transcript of the
11 deposition of said witness who was first duly
12 sworn by me on the date and place hereinbefore
13 set forth.

14 I FURTHER CERTIFY that I am neither
15 attorney nor counsel for, nor related to or
16 employed by, any of the parties to the action in
17 which this deposition was taken, and further that
18 I am not a relative or employee of any attorney
19 or counsel employed in this action, nor am I
20 financially interested in this case.

21

22

23 Alexis A. Jensen
24 Notary Public
My Commission Expires 01/31/23

25 Dated: _____

1 INSTRUCTIONS TO WITNESS

2

3 Read your deposition over carefully. It
4 is your right to read your deposition and make
5 changes in form or substance. You should assign
6 a reason in the appropriate column on the errata
7 sheet for any change made.

8 After making any change in form or
9 substance, and which have been noted on the
10 following errata sheet, along with the reason for
11 any change, sign your name on the errata sheet
12 and date it.

13 Then sign your deposition at the end of
14 your testimony in the space provided. You are
15 signing it subject to the changes you have made
16 in the errata sheet, which will be attached to
17 the deposition before filing. You must sign it
18 in front of a witness. The witness need not be a
19 notary public. Any competent adult may witness
20 your signature.

21 Return the original errata sheet to the
22 court reporter promptly! Court rules require
23 filing within 30 days after you receive the
24 deposition.

25

1	ERRATA SHEET			
2	PAGE	LINE	CHANGE	REASON FOR CHANGE
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____
6	_____	_____	_____	_____
7	_____	_____	_____	_____
8	_____	_____	_____	_____
9	_____	_____	_____	_____
10	_____	_____	_____	_____
11	_____	_____	_____	_____
12	_____	_____	_____	_____
13	_____	_____	_____	_____
14	_____	_____	_____	_____
15	_____	_____	_____	_____
16	_____	_____	_____	_____
17	_____	_____	_____	_____
18	_____	_____	_____	_____
19	_____	_____	_____	_____
20	_____	_____	_____	_____
21	_____	_____	_____	_____
22	_____	_____	_____	_____
23	_____	_____	_____	_____
24	_____	_____	_____	_____
25				

1 SIGNATURE PAGE
2 OF
3 DR. STEVEN MILLER

5 I hereby acknowledge that I have read the
6 aforementioned deposition, dated September 15,
7 2022, and that the same is a true and correct
8 transcription of the answers given by me to the
9 questions propounded, except for the changes, if
10 any, noted on the attached errata sheet.

12 SIGNATURE:

13

15 WITNESSED BY:

16

18 DATE :

19

20

21

22

23

24

25

1	LAWYER'S NOTES		
2	Page	Line	
3	_____	_____	_____
4	_____	_____	_____
5	_____	_____	_____
6	_____	_____	_____
7	_____	_____	_____
8	_____	_____	_____
9	_____	_____	_____
10	_____	_____	_____
11	_____	_____	_____
12	_____	_____	_____
13	_____	_____	_____
14	_____	_____	_____
15	_____	_____	_____
16	_____	_____	_____
17	_____	_____	_____
18	_____	_____	_____
19	_____	_____	_____
20	_____	_____	_____
21	_____	_____	_____
22	_____	_____	_____
23	_____	_____	_____
24	_____	_____	_____
25			